RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक १] गुरुवार ते बुधवार, फेब्रुवारी २७-मार्च ५, २०१४/फाल्गुन ८-१४, शके १९३५ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

BEFORE THE INDUSTRIAL COURT AT KOLHAPUR

REVISION APPLICATION (ULP) No. 161 OF 1998.—Shri Shrikant Appaji Shinde, At Post Nandani, Tal. Shirol, Dist. Kolhapur.—*Petitioner—Vs.*—Maharashtra State Road Transport Corporation, Kolhapur Division, through its Divisional Traffic Superintendent, Kolhapur.—*Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri D. N. Patil, Advocate instructed by Advocate Shri M. S. Topkar for the Petitioner.

Shri M. G. Badadare, Advocate for the Respondent.

Judgment

This is a Revision by an employee challenging legality of judgment and order passed in Complaint (ULP) No. 53 of 1998 by the Labour Court, Kolhapur, whereby relief of restraining his employer from terminating his services, is rejected by dismissing the complaint.

2. Admittedly, present Petitioner (hereinafter called as the Complainant) was working under present Respondent (hereinafter referred to as the State Road Transport Corporation) as a conductor, from the year 1987. He was served with a chargesheet dated 17th July 1996 alleging commission of certain misconducts on 11th July 1996. Then an enquiry took place. Thereafter, a show cause notice of proposed dismissal was served upon him. He challenged said action by filing Complaint (ULP) No.263 of 1996 before the Labour Court, Kolhapur wherein certain interim order was passed. Eventually, he continued to be in service, temporarily.

3. The Complainant was on duty on 20th March 1997 on Kurundwad-Bastawad route. His bus was checked by Traffic Inspector Shri Shinde at Bastawad. Shri Shinde then made report to higher authorities on same day. The Corporation then served another chargesheet dated 24th April 1997 upon him alleging misconducts under items 7(*c*), 12(*b*) of Discipline and Appeal Procedure, mainly alleging non-issuance of tickets despite collection of fare and dishonesty or misappropriation with the business of property of the Corporation. The Complainant denied all charges and then enquiry took place. The Enquiry Officer held that misconducts alleged are duly proved. Eventually, the Corporation served show cause notice dated 19th February 1998 upon the Complainant proposing punishment of dismissal.

4. The Complainant then filed above complaint on 23rd February 1998 alleging that the enquiry is not fair and proper as concerned passengers were not examined. One S. D. Dhale complained to the Corporation that balance amount is not refunded to him. Eventually, findings of the Enquiry Officer are perverse. In alternate, it is case of the Complainant that alleged misconduct is minor and technical. As such, proposed punishment is shockingly disproportionate.

5. On above averments, the Complainant prayed for requisite declaration of unfair labour practice, quashing and setting aside chargesheet, enquiry and proposed punishment and consequential directions to reinstate him with continuity of service and full back wages.

6. The State Transport Corporation filed its written statement at Exh. C-10 and traversed all material allegations made by the Complainant. It contended that the Complainant was temporarily re-employed as per interim relief granted in earlier complaint, however, committed similar misconduct again. Therefore, a chargesheet was served upon him. Enquiry is altogether fair and proper and principles of natural justice were duly followed. Findings of the Enquiry Officer is based on evidence. Considering seriousness of proved misconducts, proposed dismissal is legal and proper. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

7. The Complainant filed an application Exh. U-2 alongwith the complaint for grant of interim relief whereon the Labour Court passed an *ex-parte* order directing the parties to maintain *statusquo*. Later on, Complainant's advocate submitted that interim relief application (Exh. U-2) may be decided alongwith main complaint.

8. The Labour Court then framed issues at Exh. O-16A and the parties went to the trial. The Complainant admitted legality and fairness of the enquiry, *vide* pursis Exh. U-17. He did not lead oral evidence but produced chargesheet, enquiry papers, report of the Enquiry Officer and the show causes notice. The Corporation produced entire enquiry papers and Complainant's default card. It too did not lead oral evidence.

9. The Labour Court on perusal of evidence and hearing both parties held that findings of the Enquiry Officer are plaussible and cannot be dubbed as perverse. It then held that proved misconducts warrant punishment of dismissal. Ultimately, it dismissed the complaint by judgment and order dated 1st July 1998. The same is challenged in this Revision.

10. I heard both advocates. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether findings of the Labour Court that findings of the Enquiry Officer are not perverse, is justifiable ?

(*ii*) Whether proposed punishment of dismissal is an unfair labour practice, as alleged ?

(*iii*) What order ?

11. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) No.

(*iii*) The Revision application is dismissed.

Reasons

12. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

13. Shri D. N. Patil, learned Advocate representing the Complainant argued in terms of averments in the complaint. He submitted that passenger Shri Ambi was issued a ticket. According to the passenger, the Complainant took issued ticket from him. Therefore, question of dishonesty does not arise. Besides, refund was to be given to one passenger. As such, findings of the Enquiry Officer are perverse. In addition, Complainant's past record is not perused while proposing the punishment. Therefore, proposed dismissal is unsustainable. In support of his arguments, he relied on a decision in *Mills Manager of Savantaram Mills* V/s *Industrial Court reported in M.R.T.U. and P.U.L.P. cases at page 292 (Bom. H. C.)*

14. Shri Badadare, learned Advocate representing the Corporation replied that the Labour Court on perusal of enquiry papers has recorded a factual finding that findings of the Enquiry Officer are not perverse. Complainant's spot statement that unpunched ticket was given to passenger Shri Ambi coupled with Shri Ambi's statement that the Complainant took back the ticket from him, goes to show that the Complainant intended to re-issue said ticket. Therefore,

findings of the Enquiry Officer cannot be held to be perverse by any stretch of imagination. He further added that the Complainant by virtue of interim relief granted in complaint (ULP) No. 263 of 1996 was in employment but committed similar misconduct again. Therefore, no misplaced sympathy can be extended to the Complainant.

15. I perused the enquiry papers. The very act of taking back the issued ticket from the passenger goes to show that the Complainant intended to re-issue the same. Alleged application of one Shri Dhale for refund of amount was not produced before the Enquiry Officer and therefore, appears to be after thought. Strict and sophasticated rules of evidence under the Evidence Act do not apply in a domestic enquiry and material which is logically probative for a prudent man is permissible. Therefore, reliance on previously recorded statement of Shri Ambi without examining him does not amount to breach of principles of natural justice. It is glaring to note that the Complainant had nowhere denied recording of statement of Shri Ambi and contents thereof. As such, findings of the Enquiry Officer is well justifiable. It also needs to be emphasised that detection of excess cash of Rs. 18.25 is not properly explained. I, therefore, find that learned Labour Court has rightly held that findings of the Enquiry Officer are not perverse. Accordingly, I answer point No. 1 in the affirmative.

16. Now, turning to the proportionality of the punishment, enquiry report says that Complainant's past record is unsatisfactory. As such, decision in Savataram's case is of no help to the Complainant. Advocate Shri Badadare submitted that conductor is only course of income for the Corporation and enjoys posts of trust and confidence. Quantum of misappropriated amount is of no consequence. Besides, he has committed similar misconduct again. Therefore, proposed dismissal order cannot be said to be disproportionate. He placed reliance on decision of Hon'ble Apex Court in *Janata Bazaar* V/s. *Secrectary reported in 2000 II CLR at page 568 and V. Ramanna* V/s. *Andhra Pradesh State Road Transport Corporation reported in 2002 (I) LLN at page 121 (A.P.H.C.).*

17. By way of rejoinder, Advocate Patil submitted that the Complainant is still in employment and his record after two show cause notices is absolutely clean and unblamished. Therefore, an opportunity should be extended to him.

18. It is held in Janata Bazaar's case (referred supra) that when misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service. It is also observed that there is no question of considering past record in case of proved misappropriation. It is discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute penalty imposed by the employer, in such cases. Quantum of misappropriated amount, therefore, is of no consequences and punishment of dismissal cannot be said to be disproportionate. Such observations are also made in V. Ramanna's case (referred supra). I, therefore, hold that the punishment imposed is not an unfair labour practice. Accordingly, I answer point No. 2 in the negative.

19. To conclude, findings of the Enquiry Officer are well communsurate with evidence brought before him. Proved misconducts are grave and serious. The Complainant is holding post of trust and confidence. He indulged into similar misconducts when is in the employment by virtue of interim relief. With such background, his continuation in employment will be contrary to the verdict of Hon'ble Apex Court in Janata Bazaar's case (referred supra). I, therefore, find that the Labour Court has rightly dismissed the complaint.

20. Finally, I pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 30th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 160 OF 1998.—Shri Shrikant Appaji Shinde, At post Nandani, Taluka Shirol, District Kolhapur.—*Petitioners*—*Vs.*—Maharashtra State Road Transport Corporation, Kolhapur Division, through its Divisional Traffic Superintendent.—*Respondent*.

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocate.— Advocate Shri D. N. Patil instructed by Advocate Shri M. S. Topkar.

Shri. M. G. Badadare, Advocate for the Respondent.

Judgment

This is a Revision by an employee challenging legality of judgment and order passed in Complaint (ULP) No. 263 of 1996 by the Labour Court, Kolhapur, whereby relief of restraining his employer from terminating his services, is rejected by dismissing the complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) was working under present Respondent (hereinafter referred to as the State Road Transport Corporation) as a conductor from the year 1987. He was on duty on 11th July 1996 and paying bus from Kurundwad to Mumbai. Traffic Inspector inspected his bus at Satara Stand. He then made a report to higher authorities on same day. The Corporation then served a Chargesheet dated 17th July, 1996 upon him alleging misconducts under items 7(*c*), 7(*e*), 12(*b*) and 32 of Discipline and Appeal Procedure, mainly alleging non-issuance of tickets to passengers despite collection of fare thereof, re-issue of used tickets, dishonesty and misappropriation and detection of cash exceeding Rs. 25 without satisfactory explanation. The enquiry officer held that misconducts alleged are duly proved. Eventually, the Corporation served show cause notice dated 27th September 1996 upon the Complainant proposing punishment of dismissal.

3. The Complainant then filed above complaint on 30th September 1996 alleging that he gave reply to the chargesheet denying all allegations therein. The enquiry was not fair and proper and alleged misconducts are not at all proved in the enquiry. Eventually, findings of the Enquiry Officer are perverse. In fact, he was directed to sign spot statements of respective passengers although respective statements were not recorded in his presence. Tickets were issued to all the passengers. He further alleged that report of Traffic Inspector itself is false and frivolous. As such, proposed dismissal is an unfair labour practice.

4. On above averments, the Complainant has prayed for declaration of requisite unfair labour practice, quashing and setting aside show cause notice and perpetually restraining the Corporation from terminating his services on the basis of show cause notice.

5. The State Transport Corporation filed its written statement at Exh. C-1 and traversed all material allegations made by the Complainant. It contended that misconducts noticed by Traffic Inspector were grave and serious. Therefore, chargesheet was served upon the Complainant. Spot statements recorded were as it is. The enquiry was fair and proper. So also findings of the Enquiry Officer are legal and based on evidence. Thus, the State Road Transport Corporation justified its action and prayed for dismissal of the complaint.

6. The Complainant filed an application Exh. U-2 alongwith the complaint for grant of interim relief whereon the Labour Court passed an *ex-parte* order directing the parties to maintain *statusquo*. Later on, Complainant's advocate submitted that interim relief application (Exh. U-2) may be decided alongwith main complaint.

7. The Labour Court then framed issues at Exh. O-23 and the parties went to the trial. The Complainant admitted legality and fairness of the enquiry, *vide* pursis Exh. U-24. He did not lead oral evidence but produced chargesheet, enquiry papers, report of the Enqiry Officer and the show cause notice. The Corporation produced entire enquiry papers and Complainant's default card. It too did not lead oral evidence.

8. The Labour Court, on perusal of evidence and hearing both parties, held that findings of the Enquiry Officer are not perverse. It then held that proved misconducts amount to dishonesty and mis-appropriation or attempt of misappropriation and therefore, proposed punishment cannot be held to be dis-proportionate. Ultimately, he dismissed the complaint by judgment and order dated 1st July 1998. The same is challenged in this Revision.

9. I heard both advocates. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether findings of the Labour Court that findings of the Enquiry Officer are not pervarse, is justifiable ?

(*ii*) Whether proposed punishment of dismissal is an unfair labour practice, as alleged ?

(*iii*) What order ?

10. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) No.

(*iii*) The Revision Application is dismissed.

Reasons

11. This being a Revision under saction 44 of the M.R.T.U. and P.U.L.P. Act, 1971, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

12. Shri D. N. Patil, Learned Advocate representing the Complainant argued in terms of averments in the complaint. He submitted that the passenger did not show tickets issued by the Complainant but showed old tickets which were with them. As such, non-examination of those passengers in the enquiry, is fatal. Besides, Complainant's past record is not perused while proposing punishment. In support of his arguments, he relied on the decision in *Mills Manager of Savantaram Mills* V/s. *Industrial Court, reported in M.R.T.U. and P.U.L.P. Cases at page 293 (Bom. H. C.).*

13. Shri Badadare, learned Advocate representing the Corporation replied that the Labour Court on perusal of Enquiry papers, has recorded a factual finding that findings of the Enquiry Officer are not perverse. Powers under section 44 of the M.R.T.U. and P.U.L.P. Act are limited and can be exercised only if finding of Labour Court is perverse. In the present case, Complainant's spot statement is self eloquent. The Complainant has practically admitted all misconducts. Therefore, findings of the Enquiry Officer cannot be held to be perverse, by any stretch of imagination. He further added that the Complainant by virtue of interim relief, was in employment and committed similar misconduct again wherein he was served with show cause notice proposing dismissal. The Complainant then filed another Complaint (ULP) No. 53 of 1998 which came to be dismissed on 1st July, 1998. Therefore, no misplaced sympathy can be extended to the Complainant.

14. I perused the enquiry papers. It is seen that Reporter Traffic Inspector Shri Shinde is examined. He gave detailed report of his inspection. He was cross-examined by Union representative but nothing material came out from his cross-examination.

15. I then perused Complainant's spot statement. He has admitted that certain old tickets were found in his tray. He has further admitted that one passenger namely Shri Suryawanshi paid Rs. 15 to him but then explained that no ticket was issued due to oversight. He has further admitted that he has collected fare from other passengers but issued tickets which were not of Kurundwad-Mumbai route and then unpunched tickets were issued to them from his tray. Statements of two passengers are recorded in his presence. They have stated about the misconducts. Those statements of respective passengers coupled with Complainant's statement categorically establish misconducts as alleged. I, therefore, find that learned Labour Court has rightly held that findings of the Enquiry Officer are not perverse. Accordingly, I answer point No. 1 in the affirmative.

16. Now, turning to the proportionally of the punishment, enquiry report says that Complainant's past record is unsatisfactory. As such, decision in Savantaram's case is of no help to the Complainant. Advocate Shri Badadare submitted that conductor is only source of income for the Corporation and enjoys posts of trust and confidence. Quantum of misappropriated amount is of no consequence. Besides, he has committed amount is of no consequence. Besides, he has committed similar misconduct again. Therefore, proposed dismissal order cannot be said to be disproportionate. He placed reliance on decision of Hon'ble *Apex Court in Janata Bazaar* V/s *Secretary reported in 2000 II-CLR at page 568 and V. Ramanna* V/s *Andhra Pradesh State Road Transport Corporation reported in 2002 (I) LLN at page 121 (A.P.H.C.).*

17. By way of rejoinder, Advocate Patil submitted that the Complainant is still in employment and his record after two show cause notices, is absolutely clean and unblamished. Therefore, an opportunity should be extended to him.

18. It is held in Janata Bazar's case (referred supra) that when misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service. It is also observed that there is no question of considering past record in case of proved misappropriation. It is discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute penalty imposed by the employer, in such cases. Quantum of misappropriated amount, therefore, is of no consequences and punishment of dismissal cannot be said to be disproportionate. Such observations are made in V. Ramana's case (referred supra). I, therefore, hold that the punishment imposed is not an unfair labour practice. Accordingly, I answer point No. 2 in the negative.

19. To conclude, findings of the Enquiry Officer are well commenced with evidence brought with him. Proved misconducts are grave and serious. The Complainant is holding post of trust and confidence. He indulged into similar misconducts when is in the employment by virtue of interim relief. With such background, his continuation in employment will be contrary to the verdict of Hon'ble Apex Court in *Janata Bazaar's* case (referred supra). I, therefore, find that the Labour Court has rightly dismissed the complaint.

20. Finally, I pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 30th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 40 OF 2001.—Shri Anandrao Shankarrao Jagtap, At Post Vadaya Raibag, Taluka Khanapur, District Sangli—*Petitioner—Vs.*—(1) Maharashtra State Road Transport Corporation, Kolhapur Division, Kolhapur, through its Divisional Controller—*Respondent No. 1*—(2) Maharashtra State Road Transport Corporation, Kolhapur Division, through its Divisional Traffic Officer.—*Respondent No. 2.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocate.— Shri D. N. Patil, Advocate for the Petitioner.

Shri M. G. Badadare, Advocate for the Respondents.

Judgment

This is a Revision by an employee challenging legality of judgment and order passed in Complaint (ULP) No. 22 of 1992 by the Labour Court, Kolhapur, whereby his dismissal order is upheld by dismissing the complaint.

2. Admittedly, present Petitioner (hereinafter referred to as " the Complainant ") is working with present Respondent (hereinafter referred to as " the State Road Transport Corporation ") as a conductor with effect from 19th April 1973. The Corporation served chargesheet dated 3rd January 1987 on alleging that he, while on duty on 15th December 1986 on Kukkudwad, Takani route, misbehaved with a girl passenger, then was assulted on 16th December 1986 but did not inform such fact to the office and thereby committed misconducts under clauses 18, 29 and 30 of discipline and Appeal Procedure of the Corporation. The Complainant denied the charges by explanation dated 9th January 1987 and then an enquiry took place. In the enquiry father of the girl passenger stated that he complained against the Complainant due to some misunderstanding and application made to the Corporation is incorrect. The Enquiry Officer then held that application made by the father of the girl passenger was genuine and the Complainant has compelled the father to say that there was some misunderstanding, in collusion with the father. The Enquiry Officer then held that all charges of misconducts are proved. proposed punishment of dismissal and then a show cause notice dated 20th April, 1987 was served upon the Complainant.

3. The Complainant then filed complaint (ULP) No. 79/87 before the Labour Court, Kolhapur on the ground of apprehanded termination. In that complaint, interim relief was granted on merits in favour of the Complainant. Finally, the complaint was allowed on merits on 25th October 1988. The Corporation then filed Revision Application (ULP) No. 49/89 in this Court which came to be allowed mainly on the ground that the complaint is premature. The Corporation then dismissed the complaint *vide* order dated 27th December 1991 with effect from 31st December 1991. It is stated in dismissal order that the dismissal is not for dishonesty.

4. The Complainant then filed impugned complaint [complaint (ULP) No. 22/92] on 3rd February 1992 alleging that father of girl passenger informed to the Corporation that no action should be taken against him (Complainant) and therefore, the enquiry ought to have been dropped. Besides, the reporting authority has no where witnesses alleged incident. Eventually, there was absolutely no evidence before the Enquiry Officer to prove charges of alleged misconduct. Even then, it is held that those are proved. Thus, the findings of the Enquiry Officer are not supported by any legal evidence and are perverse. Principles of natural justice were violated in the enquiry. Therefore, his dismissal is an unfair labour practice. He further contended that his past record is nowhere considered and awarded punishment is shockingly disproportionate.

5. On above averments, the Complainant prayed for reinstatement with continuity of service and full back wages.

6. The Corporation filed its written statement at Exh. 12 and denied all meterial allegations made by the Complainant. It contended that father of the girl passenger made complaint, then an investigation was made and a chargesheet was served upon the Complainant. The enquiry is altogether fair and proper and principles of natural justice were followed. Criminal complaint filed against the Complainant was compromised and has no nexus with the enquiry. Finding of the Enquiry Officer is legal and based on evidence. Proved misconduct is grave and serious and hence the Complainant is rightly dismissed. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

7. The Labour Court then framed issues at Exh. 16 and the parties went to the trial. The Complainant admitted mechanism of the enquiry, *vide* pursis Exh.20. He produced some of the enquiry papers and certified copy of the judgment of Complaint (ULP) No. 79/87. He did not lead oral evidence. The Corporation produced entire enquiry papers and Complainant's default card. It too did not lead oral evidence.

8. The Labour Court, on perusal of evidence and hearing both parties, observed that findings of the Enquiry Officer are based on available evidence and the view taken is probable and possible. It therefore, held that those cannot be said to be perverse. It then held that punishment of dismissal is proper. Ultimately, it dismissed the complaint by judgment and order dated 26th June 2001. The same is challenged in this Revision.

9. I heard both advocates. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether findings of the learned Labour Court that findings of the Enquiry Officer are probable and possible is justified ?

(*ii*) Whether punishment of dismissal considering Complainant's past record is shockingly disproportionate ?

(*iii*) What order ?

10. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) No.

(*iii*) The Revision Application is partly allowed.

Reasons

11. Before appreciating rival contentions, certain material facts which are well established on record, needs to be stated first.

12. The Corporation suspended the Complainant with effect from 3rd January 1987 and a chargesheet of same date was served upon him. His suspension was withdrawn with effect from 10th February 1987. Thus, he resumed duties from 10th February 1987. Complaint (ULP) No. 79/87 was allowed on 25th October 1988. Corporation's Revision Application No. 49/89 was allowed on 28th June 1991. Corporation then dismissed the Complainant with effect from 31st December 1991. Thus, the Complainant was in employment till 31st December 1991.

13. The Complainant filed an application Exh. U-2 alongwith main complaint for grant of interim relief whereon the Labour Court directed to allow the Complainant to join duties until further orders, *vide* order dated 27th March 1992. The Corporation complied said order and the Complainant is in employment since then, by virtue of interim order. After dismissal of impugned complaint, the Corporation has not dismissed the Complainant due to pendency of this Revision Application. Thus, the Complainant is in employment till to-day.

14. Shri D. N. Patil, learned Advocate representing the Complainant vehementaly argued, at the outset that father of the girl passenger informed the Corporation, in writing on 24th December 1996 itself *i.e.* prior to Complainant's suspension and issuance of chargesheet that the complaint against the Complainant is going to be settled and no action should be taken against the Complainant. Therefore, the Corporation ought not to have proceeded further. He further argued that the father of the girl passenger has further affirmed in the enquiry also that false complaint application was given to the Corporation and there was misunderstanding. Consequently, observations of the Enquiry Officer that the Complainant compelled the father

of girl passenger to say that there was some misunderstanding in collusion with father, are totally imaginary. Reporting Authority has not at all seen the incident. The bus was full of passengers. If the incident as alleged, had taken place, then other passengers ought to have beaten the Complainant on the spot. Thus, the incident as alleged is inherently improbable. He further added that the father has practically withdrawn the complaint made to the Corporation as well as to police. Though strict proof of Evidence Act are inapplicable in a domestic enquiry an enquiry officer cannot proceed with conjunctures and surmises. Therefore, findings of the enquiry officer are without legal evidence and perverse.

15. Despite above arguments, later on Shri Patil submitted that the incident is of the year 1986. The Corporation may incist to lead evidence to substantiate its action after holding findings of the enquiry officer as perverse. Considering lapse of 16 years after the alleged incident, it will be inappropriate to open the enquiry again. Therefore, the matter should not be remanded to Labour Court.

16. Shri Badadare, Learned Advocate representing the Corporation replied that scope of jurisdiction under section 44 of the M.R.T.U. and P.U.L.P. Act is very limited. Reappraciation or reassessment of the evidence is not permissible. Findings of the Enquiry Officer are plaussible possible and cannot be disturbed. For that end, he relied on a decision in *Hoechst Marion Roussell Ltd.* V/s. *Mrs. Bhona Norentha and another reported in 2000 (85) FLR at page 453 (Bom. H. C.)*

17. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, this Court cannot reappreciate the evidence and overturn findings of fact if the same are communserate with proponderance of probabilities. Division Bench of Hon'ble Bombay High Court has held in *Vitthal Gatlu Marathe* V/s. *M.S.R.T. Corporation & Ors. reported in 1995 I CLR at page 854 (Bom.)* that Industrial Court cannot reappreciate the evidence and overturn findings of fact however erroneous those findings may be. Thus, this Court cannot interfere merely because other view is possible. It is to be seen whether view taken by learned Labour Court is plaussible. in my judgment, the view is plaussible. Consequential finding of the Labour Court that finding of the Enquiry Officer are not perverse is justifiable. Accordingly, I answer point No. 1 in the affirmative.

18. Advocate Shri Patil in the second phase argued that it was mandatory for the Corporation to consider Complainant's past record while imposing punishment. Non-consideration thereof amounts to breach of principles of natural justice and the dismissal order needs to be set-aside. For that end, he relied on a decision in *The Mill Manager, Savatram Ramprasad Mills* V/s. The *Industrial Court, Nagpur reported* in M.R.T.U. and P.U.L.P. Cases at page 293(Bom.).

19. The Corporation has produced Complainant's past record. The same can be perused while deciding proportionality of the punishment. No doubt, Enquiry Officer's report as well as order of dismissal, nowhere refers Complainant's past record as well as consideration thereof in either way. Corporation's Counsel Shri. Badadare submitted that back record can well be considered by this Court while considering proportionality of the punishment. In my opinion, the Complainant has not come with a case that non-consideration of past record amounts to breach of principles of natural justice. Therefore, observations in Savatram's case (referred supra) are of no help to him. Suffice to say that his past record can well be considered while considering proportionality of the punishment.

20. Advocate Shri Patil then argued that peculiar circumstances of this case like withdrawal of the complaint by the father of the girl-passenger, on-consideration of Complainant's past record, his continuation in service till today and absolute clear service record from 15th December 1986 till today cannot be ignored at any costs. Besides, the Complainant is working from 19th April 1973 and is not on the verge of retirement. All such circumstances, does not warrant and justify punishment of dismissal. The Complainant has reformed and corrected himself and retributive punishment should not be resorted to. He placed reliance on a decision of Apex Court in *State of Tamil Nadu and Ors.* V/s *M. Natrajan and Anr*. reported in 1997 II CLR at page 407. He further added that considering lapse of 16 years now, the misconduct can well be said as technical one. Therefore, punishment of stoppage of increments as upheld in above decision, will be proper.

21. Advocate Shri Badadare did not dispute that the Complainant is on the verge of retirement and his past record is good. He replied that scope of intofference under section 11A of the I. D. Act is very limited and hence punishment of dismissal is proper.

22. The peculiar facts and circumstances referred by Advocate Shri Patil certainly assume a significant role while considering quantum of punishment. Complainant's past record from 15th December, 1986 is totally clean and unblamished. Past record from the year 1973 to 1986 is of marginal misconducts. Now, he is on the verge of retirement. It is needless to say that past record serves as a barometer to consider nature of punishment and the case of an employee who commits misconduct on one occasion is certainly different from that of an employee who has committed misconducts on several occasions.

23. Considering all above circumstances and observations of Hon'ble Apex Court in *State of Tamil Nadu* V/s. *M. Natrajan and Ors. (referred supra)* are well applicable here. In that case, a Police Officer misbehaved with two ladies. Hon'ble Apex Court held that punishment of stoppage of 4 increments with cumulative effect is proper and order of removal was setaside. Learned Labour Court has not considered past record and all other circumstances and directly held that punishment of dismissal is proper. In the eyes of law, consideration of past record is necessary. It also needs to be stated that the Complainant is not punished on the ground of dishonesty. Eventually, I find that punishment of dismissal is shockingly disproportionate. Accordingly, I answer point No. 2 in the affirmative.

24. In the background of above discussions and findings, the Revision needs to be allowed partly by allowing the complaint partly. Punishment of stoppage of 4 increments with cumulative effect will be proper.

25. Finally, I pass following order :—

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned judgment and order dismissing the complaint entirely is set-aside.

(*iii*) The complaint is partly allowed.

(*iv*) It is declared that the State Transport Corporation has indulged into unfair labour practices under item 1(g) of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

(*v*) The State Road Transport Corporation is directed to cease and desist from engaging such unfair labour practice forthwith.

(*vi*) The Corporation is directed to continue the Complainant in service by stopping four increments with cumulative effect.

(*vii*) Parties shall bear their own costs throughout.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 30th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 183 OF 1991.—(1) Baburao Shankarrao Bavadekar, At Post Solankur, Tal. Radhanagari, Dist. Kolhapur, (2) Balavant Nana Kawade, At Post Patankar Sawarde, Tal. Radhanagari, Dist. Kolhapur, (3) Raghunath Sakharam Hazam, At Post Mallewadi, Tal. Radhanagari, Dist. Kolhapur, (4) Shripati Dnyanu Yadav, At Post Mallewadi, Tal. Radhanagari, Dist. Kolhapur, (5) Ashok Ramchandra Yadav, At Post Mallewadi, Tal. Radhanagari, Dist. Kolhapur, (6) Shivaji Shamrao Khade, At Post Mallewadi, Tal. Radhanagari, Dist. Kolhapur, (7) Ananda Tukaram Kamble, At Post Solankur, Tal. Radhanagari, Dist. Kolhapur, (8) Babu Soma Kamble, At Post Panori, Tal. Radhanagari, Dist. Kolhapur, (9) Ganapat Sakharam Kamble, At Post Panori, Tal. Radhanagari, Dist. Kolhapur, (10) Ganapat Gopal Dandekar, At Post Panori, Tal. Radhanagari, Dist. Kolhapur, (11) Namdeo Dattatray Kamble, At Post Panori, Tal. Radhanagari, Dist. Kolhapur, (12) Dattatraya Dhondi Jadhav, At Post Mallewadi, Tal. Radhanagari, Dist. Kolhapur, (13) Bhikaji Balavant More, At Post Mallewadi, Tal. Radhanagari, Dist. Kolhapur, (14) Krishna Vitthal Patil, At Pandewadi, Post Patankar Savarde, Tal. Radhanagari, Dist. Kolhapur.—*Complainants*—*Versus*—(1) The Executive Engineer, Mechanical Division, Sinchan Bhavan, Tarabai Park, At Post and Dist. Kolhapur—*Respondent No. 1*, (2) The Superintending Engineer, Mechanical Circle, Warna Bhavan, Tarabai Park, At Post and Dist. Kolhapur.—*Respondent No. 2.*

In the matter of complaint U/s. 28(1) read with items 5, 6, 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri P. S. Kulkarni, Advocate for Complainants.

Shri A. M. Peerzade, Asstt. Government Pleader for Respondents 1 and 2.

Judgment

This is a complaint under section 28(*1*) read with items 5, 6, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. Admittedly, present Complainants were in employment of Respondents. They filed Complaint (ULP) No. 69 of 1985 before the Labour Court, through Maharashtra Rajya Veej Pantbandhare Kamgar Sangh alleging that their termination with effect from 6th August 1985 is an unfair labour practice under item 1 of Sch. IV of the MRTU and PULP Act. It was allowed on 19th July 1990 directing present Respondents to reinstate them with continuity of service and full back wages. Present Respondents challenged said decision before this Court *vide* Revision (ULP) No. 93/90 which came to be dismissed on 10th June 1991. The Respondents then challenged both decisions in the Hon'ble High Court *vide* Writ Petition No. 5417 of 1991 which is now dismissed on 14th November 1995. In the mean-time, the Complainants requested Respondent No. 1 *vide* letter dated 16th July 1991 to allow them to join the service as per decision of Labour Court, which was confirmed by this Court.

3. Respondent No. 1 then issued a common order dated 30th July 1991 directing the Complainants to join the duties.

4. The Complainants then filed this complaint on 16th August 1991 contending that Respondent No. 1's order dated 30th July 1991 allowing to join them is inconsistant to Labour Court's order in Complaint (ULP) No. 69/85. They, therefore have joined the duties on 5th August 1991 under protest.

5. It is alleged by the Complainants that Irrigation Power Department of Government of Maharashtra is an 'industry' as defined under the I. D. Act and hence the Respondents are governed by provisions of the MRTU and PULP Act, 1971. They are in continous employment of Respondents for more than 7 years and have attained status of a permanency. Even then, they are employed as temporary employees on daily rated basis and paid at the rate of 60% of wages of permanent employees. In fact, they are entitled to benefit of converted post on the converted regular temporary establishment. The Respondents are not paying wages equal to that of a permanent employee and is an unfair labour practice under items 5 and 9 of Sch. IV of the MRTU and PULP Act.

6. It is further alleged by the Complainants that they are purposely employed as temporaries and continued as such for years together with an object of depriving them of their status and privileges of a permanent employee and as such it is an unfair labour practice under item 6 of Sch. IV of the MRTU and PULP Act, 1971.

7. The Complainants have further come with a case that the Respondents are governed by the Industrial Employment Standing Orders Act and provisions of Model Standing Orders are applicable to the Respondents. They, therefore, are entitled to be made permanent as per provisions of Model Standing Orders. Respondents failure to make them permanent is contrary to provisions of law and is an unfair labour practice. They are not even paid back wages as per decision of the Labour Court. On the contrary, the Respondents threatened them to terminate their services. Such threat is an unfair labour practice under item 10 of Sch. IV of the MRTU and PULP Act, 1971.

8. On above averments, the Complainants have prayed for requisite declaration of unfair labour practice, direction to the Respondents to make them permanent from their respective deemed dates, further direction to pay back wages and pay wages at par with permanent employee from deemed dates of their permanency and other consequential reliefs.

9. Respondents 1 and 2 filed their written statement at Exh. C-6 contending at the outset that their department is not an 'industry' and therefore, this Court has no jurisdiction to try and entertain the complaint. They have further contended that Writ Petition No. 5417 of 91 is pending in the Hon'ble High Court and hence decision of Labour Court and this Court are not final. It is their case that order dated 30th July 1991 allowing the Complainant to join the duties is consistent with decision of Labour Court. Entire back wages are paid to the Complainants. Besides, they have not indulged into discrimination while paying wages to the Complainants permanent employees and wages are paid to the Complainants as per the Kalelkar Award. Thus, the Respondents have denied all allegations of unfair labour and finally prayed for dismissal of the complaint.

10. I heard both sides. Considering rival submissions following points arise for my determination :—

(*i*) Do the Complainant prove that the Respondents have engaged in unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act, 1971 ?

(*ii*) Do the Respondents prove that they have paid back wages to the Complainants as per decision in Complaint (ULP) No. 69/85 ?

(*iii*) What order ?

11. My findings on above points, are as under :—

(*i*) Yes.

(*ii*) No.

(*iii*) The complaint is allowed.

Reasons

12. I must state at the outset that though it is alleged in the Complaint that the Respondents have threatened the Complainants to terminate them, there is no material on record to substantiate such contention. As such, point regarding item 10 of Sch. IV of the Act is not framed. The Complainants have filed pursis Exh. U-21 that they have confined the complaint to the extent of item 9 of Sch. IV of the MRTU and PULP Act only. As such, point regarding such unfair labour practice only is framed. Likewise, Writ Petition No. 5417 of 1995 is dismissed by Hon'ble High Court on 14th November, 1985. As such, plea in the written statement (Exh. C-6) that decision of Labour Court and this Court are not final, does not surive. There is nothing on record that the Respondents have challenged Hon'ble High Court's order before Hon'ble Apex Court nor such is their case now. I therefore, proceed holding that divisions of Learned Labour Court in Complaint (ULP) No. 69/85 is now conclusive and final.

13. The Complainants have produced copies of decisions of Labour Court in Complaint (ULP) No. 69/85 and of this Court in Revision Application (ULP) No. 93/90. They have also produced Respondent No. 1's order dated 31st July 1991 allowing them to join duties.

14. The Complainants as permitted by this Court *vide* order below their Application Exh. U-14, filed affidavit of Complainant No. 3. They also examined Complainant No. 3 at Exh. UW-1. In rebuttal, the Respondents examined their Deputy Executive Engineer Shri Jadhav at Exh. CW-1. The Respondents produced copies of various Government Circular and proposal dated 6th June 1995 sent to Government of Maharashtra for taking the Complainants and other employees on converted regular temporary establishment.

15. Complaint No. 3 (UW-1) deposed that Respondents are under obligation to extend benefits of permanency to all the Complainants from 241st day of their services, as per Model Standing Orders. He replied in the cross-examination that Government has not accorded sanction to take the Complainants on Converted Regular Temporary Establishment despite correspondence of Respondents 1 and 2 and they will be made permanent after the sanction.

16. Executive Engineer Shri Jadhav (Exh. CW-1) deposed that a proposal is sent to Government on 6th July 1995 to take the Complainants on Converted Regular Temporary Establishment, reminder thereof are also sent but Government has issued a circular dated 24th April 2001 regarding taking employees on the post of Converted Regular Temporary Establishment. As per said circular the Complainants should withdraw their complaint to take them on converted regular temporary establishment. He replied in the cross-examination that daily rated employees are paid 60% wages of permanent employees whereas C. R. T. employees are paid 100% wages like paid to permanent employee. He further explained that converted regular temporary and daily rated employees work together and do similar work.

17. On perusal of documents produced by the Respondents with list Exh. C-10, it is sent that a proposal to take 282 daily rated employees (including the Complainants) is sent to Government on 6th July 1995. It is stated therein that daily rated employees at Sr. No. 3 to 16 (present Complainants) are allowed to resume duties from 6th August 1991, as per decision of labour Court in Complaint (ULP) No. 69/85 and they are to be granted continuous service and back wages. But Shri Jadhav clarified that their names are at Sr. No. 131 to 144. It is further seen that the Respondents sent reminders dated 7th November 2001 to which Government of Maharashtra replied that daily rated employees who have approached Courts for not taking them on Converted Regular temporary will be taken on converted regular temporery establishment after withdrawal of complaints, as per Government regulation dated 24th April 2001. It is further directed by the Government that accordingly reports should be sent.

18. Although, Respondents 1 and 2 have taken a plea that Irrigation Department is not an industry as defined under the I. D. Act, said issue is negated in decision of Complaint (ULP) No. 69/85. Hon'ble Apex Court in *Des Raj* V/s. *State of Punjab reported in 1988 I CLR at page 620* has held that Irrigation and Power Department of the Government is an industry within meaning of section 2(*j*) of the I. D. Act. As such, the complaint is maintainable. Relying upon decision of hon'ble Apex Court in others decisions, it is held in *Executive Engineer* V/s. *Anant Murari and Ors. reported in 1998 I CLR at page 403, (Bom. H. C.)* that Irrigation Department of Government of Maharashtra fall within the definition of ' industry ' for the purpose of section 2(*j*) of the I. D. Act.

19. Shri P. S. Kulkarni learned advocate representing the Complainant initially argued that the Complainants are entitled to permanency on completion of 240 days as per Model Standing Orders. But then conceded by referring decision in Executive Engineer *V/s.* Anant Murari (referred supra) that the Complainants are claiming benefits of Kalelkar Award and hence should be awarded with benefits of permanency. Therefore, the Complainants ought to have been taken on converted regular temporary establishment after 5 years continues service. Respondents 1 and 2 have sent proposal showing the dates of each of the Complainant who have completed 5 years continuous service as contemplated under Kalelkar Award. Therefore, the Respondents must take the Complainants on convernted regular temporary establishment from their respective due dates. Government resolution dated 24th April 2001 is administrative directions and cannot overrule order of Hon'ble High Court. Non-compliance of directions in Kalelkar Award amounts to an unfair labour practice. Respondents 1 and 2, therefore, cannot compel the Complainants to withdraw the complaint for getting themselves converted on converted regular temporary establishments. Therefore, the Respondents be directed to take all the Complainants on converted regular temporary establishment on the dates as mentioned in column 5 of proposal dated 6th July 1995. Likewise, they be directed to pay 100% wages at part with permanent employees from such date.

20. Shri Peerzade Learned Assistant Government Pleader replied that Respondents 1 and 2 have no independent authority to take the Complainants on converted regular temporary establishment Respondents 1 and 2 have sent reminders to higher authority from time to time. As such the Complainants cannot be taken on converted regular temporary establishment unless they withdraw this complaint.

21. Termination of the Complainants on 6th August 1985 is held to be an unfair labour practice in decision of Complainant (ULP) No. 69/85. Eventually, the Respondents have to reinstate them with continuity of service and full back wages. Said decision is upheld by this Court as well as by Hon'ble High Court. The Complainants have acrrued right to the back wages although it is alleged in the written statement (Exh. C-6) that back wages are paid to the Complainants, Deputy Executive Engineer Shri Jadhav has replied in the cross-examination that no back wages are paid to the Complainants despite Labour Court's order. Government resolution dated 24th April 2001 cannot override decision which is confirmed by the Hon'ble High Court. As such, the Complainants cannot be compelled to withdraw the complaint so as to get themselves converted on converted rugular temporary establishment. In other words, withdrawal of complaint cannot be condition president for conversion. If such via-media is permitted, the same will be contrary to the decision of Hon'ble High Court in Writ Petition No. 5417 of 1991.

22. It is held in The *State of Maharashtra* V/s. *M. V. Ghalge and Anr. reported in 1992 Lab. I. C. at page 748* that working on daily rated establishment, in five consecutive years, irrespective of number of days of actual work rendered in each of said five years, would be entitlement to benefit of having his post converted to post of converted regular temporary establishment. In the present case, the Complainants are directed to reinstated with continuity of service. As such, they are entitled to be converted to post of converted post of establishment on completion of 5 consecutive year's service. Their advocate Shri Kulkarni stated that dates of all Complainants of completition of five consecutive years's service stated in proposal dated 6th July 1995, are correct. It is needless to state that Kalelkar Award is binding on the Respondents. Therefore, the Complainants are entitled to be converted on the post of converted post of establishment on completion of 5 years continuous service from the dates of their appointments. Government resolution dated 24th April 2001 cannot be and should not be a condition precident for their such conversion. As per own admission of Deputy Executive Engineer Shri Jadhav (Exh. CW-1). Converted Regular temporary employees are entitled to 100% wages like paid to permanent employees, Eventually, the Complainants are entitled to 100% wages like paid to permanent employees with effect from completion of 5 years service, as they are deemed to be converted on regular temporary establishment by virtue of Kalelkar Award. Paying less wages *i.e.* 60% to them is contrary to Kalelkar Award and is an unfair labour practice. Likewise, insistence to withdraw this complaint for getting themselves converted on post of converted regular temporary establishment is contrary to provisions of Kalelkar Award as well as decision of Hon'ble High Court in Writ Petition No. 5417/91.

23. In the background of above discussions, I find that Respondents 1 and 2 have indulged into an unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act by not taking the Complainants on converted regular temporary establishment after completition of 5 years continuous service and by not paying wages at par with permanent employees from such date. Accordingly, I answer point No. 1 in the affirmative.

24. Deputy Executive Engineer Shri Jadhav has categorically replied that no wages are paid to the Complainants as per order of Labour Court, Kolhapur in Complaint (ULP) No. 69 of 1985. Such non-payment also amounts to unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act, 1971. Accordingly, I answer point No. 2 in the negative.

25. In the light of above facts and circumstances, I pass following order :—

Order

(*i*) The complaint is allowed.

(*ii*) It is declared that Respondents 1 and 2 have engaged in an unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act, 1971.

(*iii*) Respondents 1 and 2 are directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*) Respondents 1 and 2 are further directed to take the Compainants on converted regular temporary establishment on completion of 5 years from the date of their appointments.

(*v*) Respondents are further directed to pay wages to the Complainants as converted regular temporary employees from the date of completion of five year's service.

(*vi*) They are further directed to pay back wages to the Complainants as per decision of Labour Court in Complaint (ULP) No. 69 of 1985.

(*vii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 30th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 35 of 1996.—Shri Laxman Daulatrao Desai, 800, Line Bazar, New Palace, Kolhapur.—*Complainant—Versus*—(1) Principal, Industrial Training Institute, Kalamba Road, Kolhapur—*Respondent No. 1*, (2) Dy. Director, Technical Education, Ghule Road, Pune-5—*Respondent No. 2*, (3) Director of Technical Education, 3, Mahapalika Marg, Bombay 1.—*Respondent No. 3.*

In the matter of complaint U/s. 28(*1*) read with items 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri M. G. Badadare, Advocate for the Complainant.

Shri S. R. Pisal, Asstt. Government Pleader for Respondents 1 to 3.

Judgment

This is a complaint purported to be under section 28(*1*) read with items 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. Admittedly, the Complainant started working under Industrial Training Institute at Pune as Painting and Decoration Instructor from 20th November 1963. He was then transferred to Industrial Training Institute at Kolhapur in the year 1968. Industrial Training Institutes at Pune and Kolhapur come under Pune Region. The Complainant thereafter was transferred to Industiral Training Institute at Amravati (Nagpur Region) by order dated 12th August 1968. He then worked at Amravati from 22nd August 1968 to 1st April 1979. His name was at Sr. No. 41 in the seniority list while working under Nagpur Region.

3. The Complainant was than transferred to Industrial Training Institute at Kolhapur (under Pune Region) by order dated 1st August 1979. Transfer order says that he is transferred on his request and he will be junior most in the seniority list of Instructors under Pune Region. In the seniority list of Pune Region his name was shown at Sr. No. 511 *i.e.* junior most person. He then retired at Kolhapur itself on 30th June 1995.

4. The Complainant filed above complaint on 30th January 1996 alleging they new pattern was entroduced in the year 1968, whereby post of painting and Decoration Instructor become surplus at Kolhapur. Eventually, he was transferred to Amravati for convenience of Government and not on his request. At that time, his number in seniority list was at Sr. No. 41. He was transferred to Pune Region and posted to Industrial Training Institute at Kolhapur on his request, however, he cannot be kept as junior most in the seniority list of Pune Region. He might have been kept as junior most for local promotion under Pune Region. Respondent No. 3 Director of Technical Education is the Controling Authority for promotion, gradation etc. He, while in service requested Respondent No. 2 Director Technical Education to properly enter his name at Sr. No. 41 in the seniority list of Pune Region, but Respondent No. 3 rejected his Application. Respondent No. 3's Act of refusing to correct his seniority list is contrary to the Maharashtra Civil Services (Regulation of Seniority) Rules 1982 and is an unfair labour practice. His seniority does not affect despite transfer. He was entitled to be promoted on the post of Group Instructor as per Rules. However, was falsely refused promotion on the false grounds that his name in the seniority list is at Sr. No. 511. The unfair labour practice is continuing one and hence the complaint is within limitation.

5. On above averments, the Complainant prayed for declaration of requisite unfair labour practice, direction that he is deemed to be promoted in December, 1993 on the post of Group Instructor, further direction to extend pay and pension benefits of promotional post and other consequential reliefs.

6. The Respondents filed their written statement at Exh. C-6 and tranversed all material allegations made by the Complainant. They contended at the outset that seniority list is maintained regionwise. The Complainant was kept as junior most in the seniority list of Pune Region, when was transferred from Amravati to Kolhapur as specifically stated in his Transfer order. The Complainant accepted said condition and then joined at Kolhapur (Pune Region). Eventually, his name was entered at Sr. No. 511 in the seniority list of Pune Region. Employees senior to him in Pune Region's Seniority list are promoted. Therefore, they have not indulged into any unfair labour practice. Finally, they prayed for dismissal of the complaint.

7. Considering rival submissions, following points arise for my determination :—

(*i*) Does the Complainant prove that the Respondents have engaged in an unfair labour practice under items 9 of Sch. IV of the MRTU and PULP Act, 1971 ?

(*ii*) What order ?

8. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The complaint is dismissed.

Reasons

9. It needs to be stated at the outset that averments in the complaint are short of unfair labour practice under item 10 of Sch. IV of the MRTU and PULP Act and hence point thereof is not framed.

10. The Complaint produced copies of representations made to Asstt. Commissioner of Labour, Kolhapur and Respondent No. 3. Seniority list published by Deputy Director of Nagpur Region and Seniority list published by Deputy Director of Pune Region. He also produced relevant documents regarding his retirement and reply of Respondent No. 2 regarding his seniority. He also examined himself at Exh. UW-1. In rebuttal, the Respondent produced copy of Complainants transfer order dated 1st August 1979, concerned orders thereof and copy of concerned pages of his service book. No oral evidence was led by the Respondent.

11. The material facts except controversy regarding Complainant's transfer from Amravati (Nagpur Region) to Kolhapur (Pune Region) on his request or otherwise are no longer to dispute. The question as to transfer from Amravati to Kolhapur on request or otherwise goes to the root of the matter and needs to decided first.

12. The Complainant deposed that he was transferred from Amravati to Kolhapur in due course, never requested for out of region transfer and reason put forth in the written statement (Exh. C-6) is false. However, he replied in the cross-examination that Respondent No. 3 alone can make out of region transfers and he was transferred from Nagpur Region to Pune Region as per order passed on 8th January 1979 by Respondent No. 3. He further accepted that Respondent No. 2 (Deputy Director of Pune Region) then posted him at the Industrial Training Institute, Kolhapur *vide* order dated 12th January 1979. He also accepted that Principal of Industrial Training Institute, Amravati made an endorsement in his service Book regarding out of region transfer made by Respondent No. 3.

13. Shri Badadare, learned Advocate representing the Complainant vehementaly argued in the first phase that the Respondents have not produced Complainant's alleged application for out of region transfer and, therefore, Complainant's version that transfer from Amravati to Kolhapur was in due course and was not request transfer, has to be accepted.

14. Shri Pisal, learned Assistant Government Pleader representing Respondents 1 to 3 replied that Respondent No. 3's order dated 8th January 1979 categorically says that the Complainant is transferred on his request and is not entitled to any allowances. Accordingly, a specific endorsement is made by Amravati Principal in Complainant's service book. Had there been no such order of Respondent No. 3, the Complainant could not be transferred out of region as admittedly, Respondent No. 3 can alone make out of region transfer. He then took me through complaint and pointed out that paragraph 3(5) thereof says that the Complainant requested to re-transfer him to Pune Region. The Complainant ought to have protested in the year 1979 itself if out of Region Transfer was not on his request. As such, plea that out of Region Transfer was not on 'request' is totally after thought.

15. Firstly, the Complainant is bout by his pleadings. He has categorically pleaded in paragraph 3(5) of the complaint that he requested for re-transfer to Pune Region. He has further pleaded in paragraph 3(9) of the complaint that he might have been kept last in the seniority list for local promotion in Pune Region because he was transferred on his own request. In addition, he has specifically accepted in representation dated 20th October 1993 made to Respondent No. 3 that he was transferred from Amravati to Kolhapur on his own request. Besides, it is seen that out of region transfer order made by Respondent No. 3 was sent to the Complainant and a entry to that effect was made by Amravati Principal in his service book. Out of region transfer order as well as entries in service-book categorically says that the Complainant is transferred on his request. It also needs to be emphasised that out of region transfer can be made alone by Respondent No. 3 and there was no necessity to effect Complainant's out of region transfer in due course. Complainant's inaction to protest regarding contents of out of region transfer speeks voluminously. His voluntary statement in representation dated 20th October 1993 that he was transferred on request is fatal for him. All such circumstances, categorically establish that he was transferred from Amravati (Nagpur Region) to Kolhapur (Pune Region) on his request.

16. Advocate his Badadare, canvassed in the second phase that Complainant's seniority when was transferred out of region *i.e.* Kolhapur to Amaravati was protected. In the same fashion, his seniority under Pune Region ought to have been protected. The Complainant ought to have been promoted on the post of Group Inspector by protecting his seniority as Shri Patil and Deshmukh who were juniors to the Complainant are promoted on the post of Group Inspector by order dated 26th November 1993.

17. Shri Pisal, replied that the Complainant was well aware that he will be junior most in the seniority list as specifically ordered in his transfer order dated 8th January 1979. Instructor's seniority list is always Region-wise and there is no separate seniority list of trade-wise instructors. Accordingly, the Complainant has admitted in his cross examination. As such, there is no unfair labour practice by any of the Respondents.

18. Governor of Maharashtra has framed maharashtra Civil Services (Regulation of Seniority) Rules 1982. Rule 4 thereof speaks of general principle of seniority. It says that subject to other provisions of these Rules, the seniority of a Government servant in any post cadre or service shall ordinarily be determined on the length of continuous service therein. Rule 5 thereof is regarding assignment of deemed date of appointment and is exception to general principles of Seniority stated in Rule 4. It's Sub-Rule (7) says that transferred Government servant may be assigned such deemed date of appointment after considering his class, pay-scales, cadre or service from which he is transferred, the length of his tenure therein and the circumstances leading to his transfer.

19. The Complainant has admitted in his cross examination that instructor's seniority list is region wise. The Complainant was transferred out of region from Amravati to Kolhapur on his request. Earlier transfer from Kolhapur to Amravati was not on his request and, therefore, his seniority was protected. But the later transfer was on his request. Eventually, he could not rather cannot be foisted upon instructors who were already working under Pune Region. Considering all such circumstances, the Respondent No. 3 as per provisions of Rule 5(7) of the Maharashtra Civil Services (Regulation and Seniority) Rules has rightly directed that the Complainant will be junior most in the seniority list of Pune Region. In other words the Complainant will have to suffer as he himself requested for out of region transfer. Besides, he was made aware in the transfer order itself that he will be junior most in the seniority list. Therefore, now he cannot say that his past services ought to have been protected for the purpose of seniority. Eventually, it cannot be accepted that the Respondents have induldged into an unfair labour practices under item 9 of Sch. IV of the MRTU and PULP Act.

20. To summarise, Complainant's earlier transfer was for administrative purposes and hence his seniority was protected. He himself applied four out of region transfer (request transfer). Instructor's seniority list is Region-wise. Instructors working under Pune Region cannot be penalised on account of out of request region transfer of the Complainant. Therefore, Respondent No. 3 was well justified in directing that the Complainant will be junior most in the seniority list of Pune Region.

21. In the background of above discussions, I hold that the Complainant has failed to prove commission of unfair labour practice. Accordingly, I answer point No.1 in the negative and pass following order :—

Order

(*i*) The complaint is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 14th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 355 OF 1994.—Ratnagiri Zilla Prathamik Shikshak Sahakari Patpedhi Maryadit Karmachari Sangh, Ratnagiri, 2374, Patitpavan, Ratnagiri, through its Secretary.—*Complainant—Versus*—(1) Ratnagiri District Primary Teacher's Co-op. Credit Society Ltd., Ratnagiri, through its Secretary—*Respondent No. 1*, (2) Shri Madhukar Gopal Jadhav, Sadamira, Anandnagar, Ratnagiri.—*Respondent No. 2.*

In the matter of complaint U/s. 28(1) read with items 9 of Sch. IV of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri A. M. Patwardhan, Advocate for the Complainant.
Shri R. G. Rane, Advocate for Respondent No. 1.
Shri S. R. Rane, Advocate for Respondent No. 2.

Judgment

This is a complaint by an Union under section 28(1) read with items 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. Admittedly, the Complainant Ratnagiri Zilla Prathamik Shikshak Sahakari Patpedhi Maryadit Karmachari Sangh, Ratnagiri (hereinafter referred to as the Union) is registered trade union. Respondent No. 1 Ratnagiri Zilla Primary Teacher's Co-op. Credit Society, Ratnagiri (hereinafter referred to as the Credit Society was originally working in two districts *i.e.* Ratnagiri and Sindhudurg. Thereafter, it is working in Ratnagiri District only. It is governed by the Industrial Disputes Act. The Union is the only representative union for Respondent No. 1 Credit Society. Nearly all employees of the Credit Society are members of the Union. The Credit Society has its own service regulation. Regulation No. 51 thereof is regarding promotion.

3. It is case of the Union that names of its members/employees are stated in Annexure 'A' of the complaint. There is a single post of senior clerk in establishment of Respondent No. 1 Credit Society. Service Regulation No. 51 says that all promotional post except of Secretary, Assistant Secretary and Accountant shall be filled by seniority.

4. It is alleged by the Union that one Shri M. G. Jadhav was appointed on 1st July 1996. His educational qualification is S. S. C. and L.S.G.D. He was previously working as Branch Manager. The credit Society promoted him on the post of Sr. Clerk on 1st March 1992. It is alleged that there are other six employees who are senior to Shri Jadhav and have equal or more qualification than Shri Jadhav. Service record of those employees is clean. None of them are chargesheeted or disqualified for being promoted on the post of Sr. Clerk, at any time.

5. The Union has given details of educational qualification and dates of appointments of those six employees in the complaint itself. It is contended by the Union that Shri Jadhav is promoted on the alleged ground that he belongs to backward class category and as a special case. In fact, there was no backlog of backward class category and there cannot be reservation for the post of Sr. Clerk, it being a single post. As such, promotion of Shri Jadhav is in violation of Service-regulations.

6. According to the Complainant Union the Credit Society has failed to implement its own service regulations which amounts to failure to implement Award, Settlement and Agreement and is an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

7. It is further contended by the Union that it requested the Credit Society, time and again to stop unfair labour practice but no proper action was taken by the Society. The cause of action is continuous one. Even then, if it is held that the complaint is beyond the period of limitation, then delay caused in filing the complaint may be condoned.

8. On above averments, the Union has prayed for requisite declaration of unfair labour practice, direction to promote fit and eligible employee on the post of Sr. Clerk with effect from 1st March 1992 with increased pay and allowance as well as other consequential reliefs.

9. Respondent No. 1-Credit Society filed its written statement at Exh. C-4 and traversed all material allegations made by the Union. It contended that the erstwhile Ratnagiri District was bifurcated into two districts in the year 1985 and then an independant society came to be formed for Sindhudurg District. Previously, it had two posts of Senior Clerks. One post was transferred to new society for Sindhudurg District. Shri M. G. Jadhav was working as Branch Manager at that time and opted to go for Sindhudurg District in the year 1985. However, opted to come back in the year 1986. He belongs to Schedule Caste category and was posted against a reserved vacancy. He was treated as fresh employee and allocated a point in the roster. Such allocation was objected to by one Shri S. S. Kadam who made presentation to the District Deputy Registrar. Ultimately, Divisional commissioner of Kokan Division did not approve allocation of roster point to Shri Jadhav. Eventually, Shri Kadam was accorded requisite promotion.

10. It is case of the Credit Society that it is under legal obligation to maintain desired and prescribed percentage of reservation to various categories notified by the Government. Shri Jadhav is promoted strictly on the basis of seniority cum merit and there is no unfair labour practice while promoting him. Service Regulation No.51 stipulates that the promotion shall be on the basis of seniority and merit of the employees and the same shall be accorded by the Board of Directors. Its provide says that notwithstanding anything contained in above regulations, except for the post of Secretary, Assistant Secretary and Accountant, all other promotional posts shall be filled in by considering efficiency and seniority. Therefore, it cannot be faulted and blamed for following such rule. It considered relative merit of all employees eligible for promotion and then accorded promotion to Shri M. G. Jadhav, as per rules. Thus, it is case of the credit society that promotion is in consonance to service regulation No. 51.

11. It is further case of the Credit Society that Union's approach is very casual and cavalier. The complaint is filed after 9 months and 20 days after accrual of alleged cause of action and hence the Union is not entitled to any relief. Reason put forth by the Union is that it was waiting and watching the result of the representation. Therefore, the Union is not entitled to any relief as per decision of Hon'ble Apex Court in *Bhoop Sing* V/s. *Union of India reported in 1993-I- LLN a page 260 (S. C.) and S. S. Rathod* V/s. *State of Madhya Pradesh reported in 1990 Lab I. C. at page 398 (S. C.)*

12. The Society has further come with a case that old matters like seniority should not be racked after a long time as it will result into administrative complications and difficulties. Eventually, the Complainant is not entitled to the relief claimed.

13. In short, it is case of the Credit Society that promotion accorded to Shri Jadhav is as per service regulation No. 51 and well justifiable. Delay in filing the complaint is fatal and now it is not desirable to open old matters like seniority after a long time to avoid administrative complications and difficulties. Finally, it prayed for dismissal of the complaint.

14. The Union made an application Exh. UA-8 for arraying promoted employee Shri Jadhav as Respondent No. 2. It was allowed.

15. Respondent No. 2 filed its written statement at Exh. C-10 and raised almost similar contentions like raised by credit society. Respondent No. 2 too prayed for dismissal of the complaint.

16. Considering rival submissions, following points arise for my determination :—

(*i*) Does the Complainant Union prove that the Respondent No. 1-Credit Society has indulged into an unfair labour practice under items 9 of Sch. IV of the MRTU and PULP Act, 1971?

(*ii*) What order ?

17. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The complaint is partly allowed.

Reasons

18. I must state at the outset that the Union made Miscellaneous Application (ULP) No. 3/93 for condonation of delay in filing the complaint and my learned predecessor condoned the delay *vide* order dated 26th August 1994. Eventually, the question that the complaint is barred by limitation does not survive now.

19. It also needs to be stated that my learned predecessor dismissed the complaint on 6th September 1996. The Union then filed Writ Petition No. 6052 of 1996 in the Hon'ble High Court, wherein order dismissing the complaint was set aside and this Court was directed to hear and decide the complaint afresh in accordance with law after directed the parties to lead evidence. It was observed that promotion made during pendency of the complaint shall be subject to final decision of the complaint.

20. The Union produced zerox copies of Sangh's service regulation and resolution dated 9th February 1992 promoting Shri M. G. Jadhav on the post of Sr. Clerk with list Exh. U-7. It then examined Shri Gotiwadekar (Exh. UW-1) who is working as a clerk with the Sangh from the year 1991. Respondents 1 and 2 did not lead oral or documentary evidence.

21. Service Regulation No. 51 is no longer in dispute. The same is binding on the Union as well as Sangh and Respondent No. 2. Regulation dated 9th February 1992 says that post of Sr. Clerk is going to be vacant by the end of February 1992, no candidate belonging to backward class is appointed on the post of Sr. Clerk during 63 years history of the Sangh, this year (1992) is centenary year of Dr. Babasaheb Ambedkar and Mahatma Phule and the Central and State Government has policy of giving preference to candidates belonging to backward class. Therefore, Branch Manager Shri M. G. Jadhav is promoted as a Sr. Clerk as a special case considering his efficiency and experience.

22. It is not in dispute that there is only one post of Sr. Clerk. Shri Gotiwadekar deposed that other six employees are senior to Shri Jadhav, have more qualification than Shri Jadhav, but are illegally superseded by promoting Shri Jadhav. He replied in the cross examination that Shri Jadhav belongs to backward class. He denied that Shri Jadhav is promoted as per service regulation No. 51.

23. Shri Patwardhan, learned advocate representing the Complainant vehementaly argued that an employee working on a post of Branch Manager is to be promoted on the post of Sr. Clerk and such post is a single post. There is no dispute about such rule and the fact. Shri Jadhav is appointed on 1st June 1976. Other six employees as shown in Annexure 'A' of the complaint are working since prior to appointment of Shri Jadhav and admittedly are senior to him. Service Regulation No. 51 says that promotion should be on the basis of seniority cum merit. Fact that Shri Jadhav belongs to backward class category is neither a seniority nor a merit. Regulation No. 19 mainly says that Shri Jadhav is promoted as a special case mainly on the ground that he belong to backward class category. There is nothing on record to show that Shri Jadhav is more competent efficient and needs to be appointed by superseding others. Besides, it is not case of the Respondent-Sangh that six senior employees are incompetent. Thus, the promotion is arbitrary illegal and totally contrary to service regulation No. 51. He further added that alleged delay of 9 months is condoned and it is not the case that promotion is challenged after lapse of many years.

24. Shri Rane, learned advocate representing the Sangh replied that the year 1992 was centenary year of birth of Dr. Babasaheb Ambedkar and Mahatma Phule and therefore, case of Shri Jadhav prevailed a lot and his case was given a dominant consideration. Hon'ble Apex Court gave various directions in *Indira Sawhney* V/s *Union of India reported in 1992 (Suppl.) (3) S. C. Cases at page 217* about upliftment of down trodden people. It is constitutional mandate and the society complied it voluntarily. There are no allegations of favour to Shri Jadhav. As such, there cannot be an unfair labour practice in promotion of Shri Jadhav.

25. Advocate Shri Patwardhan replied that there can be no reservation for a single post. 100% reservation is not permissible. As such decision in Indira Sawhney's case (referred supra) is of no help to the Sangh. In support of his arguments, he placed reliance on the decision of Hon'ble Apex Court in *State of Punjab* Versus *Shangara Singh and Ors. reported in 1998 (4) LLN at page 102* and *Sulbha Govind Vidwans* Versus *Shravan M. Shevale and Ors. reported in 1995 I CLR at page 302 (Bom. H. C.).*

26. It is not in dispute that post of Sr. Clerk is a single post. It is also not in dispute that an employee working as a Branch Manager can only be promoted on this post. It is further not disputed that six persons are senior to Shri Jadhav *i.e.* Respondent No. 2. Although, it is stated in Resolution No. 19 that Respondent No.2 is promoted considering his efficiency and experience, there is absolutely no evidence on record to show that he is more efficient than the six Branch Managers who are senior to him. None of the Respondents have led any evidence in support thereof. In short, there is no iota of evidence to show that Respondent No. 2 is more efficient than other Branch Managers. It is basis contential of the Sangh that Shri Jadhav-Respondent No. 2 is mainly promoted as belongs to backward category and the year 1992 was an auspecious being Centenary Year of Dr. Babasaheb Ambedkar and Mahatma Phule.

27. Hon'ble Apex Court has held in Shangara Singh's case (referred supra) that there cannot be a reservation in a single post cadre because 100% reservation is not permissible. It is further laid down that question of reservation will not arise unless there is a plurarity of posts in a cadre and a single post cadre on all occasions has to be filled up only by a open competition. Decision in Indira Sawhney's case (referred supra) is referred in this case. It is observed in paragraph 32 that it is not held in Indira Sawhney's case that there can be a reservation for a single post. In my humble opinion, therefore, Shri Jadhav–Respondent No. 2 cannot be promoted on a single post of Sr. Clerk only because he belongs to backward category.

28. Hon'ble Bombay High Court has also held in Sulbha Vidwas's case (1995 I CLR at page 301) that isolated posts are liable to be treated as open, not reserved and appointment of an employee belonging to reserved category and junior one, is in violation of Article 16(1), (2) and (4) of constitution of India.

29. Sangh's plea that Respondent No. 2 belongs to backward class category and hence promoted, implies that promotional post *i.e.* post of a Sr. Clerk is of reserved category. But there cannot be a reservation in a single post cadre. Besides, regulation No. 51 nowhere permits the Sangh to promote an employee by superseding him on the ground that he belongs to reserved or backward category. The Sangh has not even got amended service regulation 51 to that effect. I, therefore, hold that promotion of Respondent No. 2 as per resolution of Respondent No. 1-Sangh is contrary to the service regulation No. 51, as well as against the reservation policy. There cannot be 100% reservation for a single post. Eventually, it is an unfair labour practice under item 9 of Sch. IV of the MRTU and PLUP Act, 1971. Accordingly, I answer point No. 1 in the affirmative.

30. Advocate Shri Rane further argued that promotion given on 1st March 1992. Now, it is not advisable to interfere into the same after lapse of 10 years. It will certainly lead to administration complications and difficulties. For that end, he relied on a decision of Hon'ble Apex Court in *Mudgal* (*K. R.*) *and Ors.* Versus *R. P. Singh and Ors.* reported in 1987 I LLN at page 19 (S. C.)

31. Advocate Shri Patwardhan replied that the Union has approached the Court as a last resort and that too after failure of the Sangh to consider its request. There is no in-ordinate delay of many years.

32. In Mudgal's case (referred supra) petitions challenging seniority, were filed 18 years after issuance of first draft seniority list and hence Hon'ble Apex Court has held that the petitions deserves to be dismissed on the ground of delay and laches. But such are not the facts of this case. The Union has approached within a reasonable time by showing its deligency. Delay of 9 months cannot be branded as in or-dinate delay. Therefore, observations in Mudgal's case (supra) cannot be applied here.

33. The Sangh has prayed for a direction to the Sangh to promote fit and eligible employee on post of Sr. Clerk with effect from 1st March 1992. Admittedly, Shri Jadhav is working on the post of Sr. Clerk from 1st March 1992 till to-day. In order to avoid complications and difficulties as well as maintain harmony between the parties, it will be proper to direct the Respondent-Sangh to promote fit and eligible employee on the post of Sr. Clerk with effect from 1st May 2002. Respondent No.2 therefore, will be entitled to draw wages of the post of Sr. Clerk from 1st March 1992 till 30th April 2002. But that does not mean that he is eligible to be promoted on the post of Sr. Clerk. Such adjustment is to be made for better administration.

34. To conclude, I pass following order :—

Order

(*i*) The complaint is partly allowed.

(*ii*) It is declared that Respondent No. 1-Sangh has indulged into an unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act, 1971.

(*iii*) Respondent No. 1-Sangh is directed to cease and desist from commiting such unfair labour practice from 1st May 2002 onwards.

(*iv*) Respondent No. 1-Sangh is directed to promote fit and eligible employee on the post of Sr. Clerk with effect from 1st May 2002.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 30th March 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———

PRESIDENT, INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL,

REVISION APPLICATION (ULP) No. 71 OF 2002—IN—COMPLAINT (ULP) No. 50 OF 2001.—Shri Chandrakant Goapl Birvatkar, B-Chawl, Near Mahakali Temple, Bhattwadi, Ghatkopar (W.), Mumbai 400 086—*Applicant—Vs.*—(1) M/s. Voltas Ltd., Dr. Ambedkar Road, Chinchpokli, Mumbai 400 033, (2) The Judge, 2nd Labour Court, Mumbai—*Opponents.*

In the matter of Revision Application U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri. U. R. Patil, President.

Appearances.— Shri. A. J. Rai, learned. Advocate for the Applicant.

Shri. P. N. Salgaonkar, for the Opponent, Advocate.

Oral Judgment

(dated the 18th June 2002)

This Revision Application is preferred by the Original Complainant against the order below Exh. U-2 dated 28th March 2002 whereby the 2nd Labour Court, Mumbai rejected the application for condonation of delay.

2. Brief facts giving rise to the case may be stated as follows :—

It is seen that the Complainant has filed Complaint (ULP) No. 50/2001 in the month of January, 2001 alleging unfair labour practice adopted by the Respondent *i.e.* employer and thereby sought necessary reliefs, as mentioned in the Main Complaint. It appears that the Complainant has filed Application Exh.U-2 for condonation of delay stating that he was facing economical orisis and due to that he was unable to take proper steps in filing the Complaint. According to him, he was serving with the Respondent as a Clerk-Typist. In 1996 he suffered a lot of problem due to eyeproblem and therefore the Respondent harassed him on that point. The Complainant states that he got examined himself from the Doctor on 29th November 1996 and still he was not permitted to report on duty. Therefore, he sent a notice through the Advocate, on which he was taken back in July 1997. Despite he was taken back in the employment, the employer continuously harassed him. He was deliberately deprived the work of typing. Chair and table provided to him was taken back, and he was forced to take VRS.

3. The Complainant states that he applied for VRS and it was given to him. He was not of the view to take voluntary retirement, but it is the Respondent who compelled him to take the same. It is also submitted that the Respondent engaged in unfair labour practice and compelled him to take VRS. Therefore, he prayed for a declaration that the Respondents have engaged in unfair labour practice, as mentioned above and to take him back in the employment. The another contention is that as he is late in filing the complaint, the application for condonation of delay be allowed as because of financial difficulties he could not prefer the complaint within the time limit.

4. The Respondent by filing Reply Exh. C-3 resisted the application and the same may be narrated as under :—

It is contended that the Complainant took voluntary retirement, a scheme sponsored by the Respondent and retired on 5th May 1999. Thereafter he seized in the employment of the Respondent since he took the VRS benefits *i.e.* retirement compensation of Rs. 2,84,013, Rs. 4,93,872 towards provident Fund and Rs. 1,08,935 by way of gratuity were paid to him. It is stated that the amount taken by the Complainant by way of VRS does not permit him to state that he was facing economical crisis and unable to approach the Advocate to challenge the VRS. It is denied that the Complainant is terminated, as alleged.

5. One of the submission in the reply is that the complaint filed by the Complainant is not filed in time, as he has challenged the VRS dated 5th May 1999 and the complaint is filed in the month of January, 2001. According to Respondent, no reason is explained by the Complainant as to why he is late in filing the complaint. Thus on these and other grounds, it is requested that the application for condonation of delay be rejected.

6. I have called for the record and proceedings and gone through the same. Heard learned Advocates for the parties. The following points arise for my determination with my findings thereon, as below :—

Points :—

(1) Whether Revision Application (ULP) No. 71/2002 is to be allowed by setting aside the order below Exh. U-2 dated 28th March 2002 passed by the 2nd Labour Court, Mumbai.

(2) What order and relief ?

Findings :—

Point No. 1.—No.

Point No. 2.—Please see order below.

Reasons

7. Record reveals that the Complainant Shri Birvatkar was working with the Respondent employer as a Typist-Clerk. In 1996 he suffered a lot of trouble due to eye problem and therefore the employer was harassing him. Mr. A. J. Rai, learned Advocate for the Applicant submitted that the Applicant got himself examined by the Doctor on 29th November 1996 and thereafter he was permitted to report for duties, but harassment continued. As per the submission of Applicant's Advocate, the Complainant was forced to take VRS and therefore the Complainant *i.e.* Applicant herein has alleged unfair labour practice on the part of the employer by filing a complaint in the month of January, 2001. As per the submission of Applicant's Advocate, there is no deliberate delay in filing the complaint because the Complainant/Applicant was facing financial difficulties and hence could not approach the Labour Court in time. Mr. Rai canvassed that the Complainant has got good case on merits and therefore the Application for condonation of delay ought to have been granted by the Labour Court. In support of his submission he invited my attention to a case reported in *1987 I LLJ 500 S. C.* (The Collector Land Acquisition, Anantnag *V/s.* Mst. Katiji). On going through this case, it indicates that there was a problem for consideration of condonation of delay. The Hon'ble Apex Court held that the legislature has conferred the power to condone delay by enacting section 5 of the Indian Limitation Act, in order to enable the Courts to do substantial justice to the parties by disposing of matters on "merits". The expression "Sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the Law in meaningful manner which subserves the ends of justice. It has been observed that refusing to condone the delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. Mr. Rai further placed reliance on a case reported in *1997 I CLR 432* (George Thomas *V/s.* Bombay Tyres International), *1996 II CLR 504 S. C., 1999 (2) CLR 7 S. C. and 2002 I CLR 811.* Thus relying on the aforesaid rulings, Mr. Rai canvassed that in the interest of justice and for hearing the complaint on merits, the Revision Application be allowed by setting aside the order passed by the Labour Court, detailed above.

8. It is rather difficult to accept the submission of the Applicant's Advocate because the case laws relied by him are totally on different grounds and the same are of no assistance while deciding the present Revision Application because the facts and the points involved in the case in hand are rather different. In the Application for condonation of delay, the Applicant has specifically stated that because of the financial crisis, he could not file the complaint in the Labour Court and that being a sole ground, the Applicant requested in the application for condonation of delay. The said contention of the Applicant cannot be accepted for the simple reason that the Applicant while taking voluntary retirement got compensation of Rs. 2,84,013, Rs. 4,93,872 towards provident fund and Rs. 1,08,935 by way of gratuity and that amount has been accepted by him. The Complainant had taken the voluntary retirement on 5th May 1999. It has been canvassed on behalf of the Applicant that he was harassed and forced to take the VRS. In that case, the Applicant should not have waited for 1 year and 5 months for filing the complaint before the Labour Court and should have approached within the time-limit *i.e.* 90 days, as prescribed U/s. 28 of the MRTU and PULP Act. The receipt of the retirement benefits by the Complainant indicates that he was in possession of such a large amount and hence he could have filed the complaint within the time-limit. Therefore, the reason shown of financial crisis while filing the complaint at the late stage cannot be accepted.

9. Another aspect is to be noted that during the pendency of the Application for condonation of delay, the Applicant has again filed Application Exh. U-4 and in the said application, he has clearly mentioned that the amount received by him had to be kept in Fixed savings since his daughter was intending to pursue further education in U. S. and to appear for the GRE and to get the VISA, the applicant had to maintain a balance of around 10,00,000 as mentioned in detail in para 3(b) of the said application. Meaning thereby, the Complainant accepted the amount which was against the VRS and kept the same in fixed deposit for the alleged reason shown in the said para 3(b). This circumstance also reflects that the Complainant could have approached the Labour Court within the time-limit by filing the complaint because it has been observed in the impugned order that for lodging the complaint and initiating it, at the most a meagre amount is required *i.e.* the Complainant has to fix a stamp of Rs. 2 an has to produce the typed copies of the complaint. Thus, it indicates that no big amount was required for moving the complaint within the time-limit, and hence the reason shown by the Complainant *i.e.* facing of economical crisis and hence could not file the complaint in time, as detailed above, appears to be not proper.

10. It is necessary to place on record that the Complainant took VRS on 5th May 1999 and the present complaint is filed in the month of January, 2001. Thus there is a delay of 1 year and 5 months in filing the complaint and the period of limitation as per the statute is 90 days. I am aware of the ruling relied by Mr. Rai, learned Advocate for the Applicant but the same are to be made applicable when a sufficient and reasonable cause is shown for condonation of delay and then only the Court can take liberal view while deciding such Application. In the case in hand, the Applicant has not come with clean hands. On one hand he states that he was facing financial crisis and on another hand in the Application Exh. U-4, he has mentioned that the amount received under VRS was to be kept in fixed deposit as his daughter was to proceed to U. S. for further education. This falsifies the pontention and the plea raised in the Application for condonation of delay because as detailed above, only a meagre amount was required for loding the complaint in the Labour Court. I am aware of the submission of Mr. Rai that the Complainant could not afford to pay the fees for filing the complaint. In the case in hand, the Complainant cannot be said to be handicapped on account of monetary means because he had already received a huge amount and the same was lying with him. Therefore, I don't find that any error is committed by the Labour Court while rejecting the Application for condonation of delay.

11. The Opponent's Advocate Mr. Salgaonkar supported the judgment of the Labour Court by pointing out the factual position and the averments made in the reply. I don't find that anymore discussion is necessary while disposing the Revision Application. Hence, I answer the point No. 1 in the Negative.

12. *Point No. 2* :—In view of the foregoing reasons and finding on point No.1, the order follows :—

Order

Revision Application (ULP) No. 71 of 2001 is dismissed.

No order as to cost.

R & P be sent back.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

dated the 18th June 2002.

K. G. Sathe,
Registrar,
Industrial Court, Mumbai.
dated the 21st June 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI V. P. ROTHE, MEMBER

COMPLAINT (ULP) No. 558 of 1998.—(1) Shri Datta Shigwan; (2) Mrs. Shubhda Gurav; (3) Ms. Geeta Pimple, C/o. Shri Datta Shigwan, Shigwan Chawl, Tadwadi, Sion-Chunabhatti, Mumbai 400 022.—*Complainants*.—*Versus*—M/s. Babson and Company, Mehta House, 79-91, Bombay Samachar Marg, Fort, Mumbai 400 001.—*Respondent.*

CORAM.— Shri V. P. Rothe, Member.

Appearances.— Shri R. L. Nerlekar, Advocate for Complainant.
Shri S. N. Desai Advocate for Respondent.

Oral Judgment

(Delivered on this 18th day of June, 2002)

1. The complaint has been filed under Section 28 read with item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. It is an undisputed fact that the Complainants were employed with the Respondent *i.e.* M/s. Babson and Company. As per the accusation in the complaint, the Complainants who have employed as Tailors by the Respondent in their Garment Industry. The Complainants were appointed by the Respondent in the year 1975 and 1973. They worked with the Respondent up to 22nd November 1986. *i.e.* The Respondent had declared a lock-out on this date.

3. It is the case of the Complainant that the wages which have been paid to the Complainants were much below the minimum wages prescribed by the Government of Maharashtra for Garment Industry. In Annexure-I filed alongwith the complaint, the Complainants have given the chart regarding the wages paid to them and the wages payable to them and thus, calculated difference in the wages of each of the Complainants.

4. When, illegal lock-out was declared by the Respondents, the union representing the Complainants *i.e.* Bharatiya Kamgar Sena had filed a complaint being Compaint (ULP) No.1126 of 1986. In this complaint, the legality and validity of the lock-out has been challenged. This complaint was amicably settled as per settlement dated 9th November 1987. As per clause (*x*) of the said settlement, it is very clear that without prejudice to the rights of the workmen to receive the additional amount, on the basis of the minimum wages fixed by the Government of Maharashtra, the Complainants can claim the additional wages. The settlement dated 9th November 1987 is placed at Annexure-II. The establishment of the Respondent is covered by the Minimum Wages Act, 1948. The amount which has been paid to the Complainant as per the settlement dated 9th November 1987 that has been accepted by the Complainants without prejudice to their rights to file appropriate proceeding before the appropriate forum.

5. One application under Section 22(*C*)(*2*) of the Industrial Disputes Act, 1947 filed by the Complainants before the First Labour Court, Mumbai. In the said applications, the Complainants have claimed the difference between minimum wages payable to them and the wages actually paid to them. As per the order dated 24th May 1996, these Application (IDA) Nos. 693 of 1988, 694 of 1988 and 822 of 1988 have been rejected by the Labour Court. In the Writ Petition No. 3920 of 1997, the Complainants have challenged this order. This Writ Petition came to be withdrawn with liberty to adopt the appropriate remedy by the Complainants. Thus, the present complaint has been filed for the unfair labour practice. In this complaint, it is prayed by the Complainants that it be declared that they are entitled to claim arrears of minimum wages as specified in Annexure 'I' of the complaint.

6. The claim of the Complainants is resisted by the Respondent as per written statement Exh. C-2. The Respondent has submitted that the complaint is not maintainable. It is barred by limitation. It is also barred under Section 59 of the M.R.T.U. and P.U.L.P. Act. The Application (IDA) Nos. 693 of 1988, 694 of 1988 and 822 of 1988 filed by the Complainants are disposed of by the Labour Court. The Writ Petition No. 3920 of 1997 filed against the said order has the withdrawn by the Complainants on 3rd November 1997. Thus, the Complainants have chosen the forum available under the Industrial Disputes Act. The dues payable on account of the closure of the factory have been paid to all the employees as per the agreement dated 11th December 1986. These dues have been accepted by the workers. The agreement also contains the Annexure specifying the dues payable to each of the workmen. The Complainants were the parties to the settlement and it is signed with Bhartiya Kamgar Sena. In para 6 of the written statement, it is specifically admitted by the Respondent that the Complainants were employed as Tailors. The Respondent has submitted that the Complainants have raised false claim against the Respondent. The Annexure does not disclose, as to how the Complainants are entitled to difference of minimum wages as claimed by them. The Annexure-I will have to be read alongwith the statement of calculations of Annexure-II. The Respondent has not denied that it is covered under the provisions of the Minimum Wages Act. The issue as regards the entitlement of the wages as per the Minimum Wages Act was agitated in the proceeding under Section 33(*C*)(*2*) before the Labour Court at Mumbai. That proceeding came to be dismissed. It is held that the Complainants have failed to establish as to how they are entitled to minimum wages at a particular rate. This being the position of law, the Complainants cannot seek any relief either under Section 33(*C*)(*2*) of the Industrial Disputes Act or under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Thus, the Complainants have failed to make out a case of unfair labour practice against the Respondent. Their claim is unfounded, baseless and there is no substance in this complaint.

7. As per the order passed on Exh. U-2, my learned predecessor was pleased to condone the delay occured in filing of this complaint and that order is un challenged.

8. On considering the pleading of the parties, following are the issues framed my learned predecessor. I reproduce the said issues at Exh. O-2 and recorded my findings against each of the issues for the reasons given hereinafter.

Issues	*Findings*
(1) Whether the Complainants prove that they are entitled to minimum wages for the relevant period as per Annexure-I to the complaint ?	Affirmative.
(2) Whether the Complainants prove that they are entitled to benefits of settlement dated 9th November 1987 on the basis of minimum wages (basic + D.A.) applicable to them at the relevant time ?	Affirmative.
(3) Whether the Complainants prove they the Respondents have indulged in unfair labour practices as stated in the complaint ?	Affirmative.
(4) Whether the Respondent proves that the complaint is not maintainable ?	Negative.
(5) What order ?	As per final order.

Reasons

9. *Issue Nos. 1 and 3* :— These issues are pertaining to the facts whether the Complainants prove that they are entitled to get the minimum wages for the relevant period as per Annexure-I to the complaint and whether the Respondents have indulged any unfair labour practice as stated in the complaint.

10. In lieu of the Examination-in-Chief Exh. U-6 is the affidavit filed by the Complainant Shri Datta Shigwan. In this affidavit, it is stated by the Complainant that since 9th May 1995 he worked with Respondent and Mrs. Shubhada Gurav and Ms. Geeta Pimple have worked with the Respondent since 22nd September 1973 and 21st September 1973 respectively. All of them were doing the work of tailor. They were stitching the readymade garments *i.e.* coat, pant etc. They were not paid as per the minimum wages. The details of the wages paid to each of the Complainants and payable to the Complainants have been given in Annexure 'I'. In the cross examination of the Respondent, it is admitted by Shri Shigwan (UW-1) that his initial appointment was as a Tailor and he was made the sample maker after 8 days of his appointment. There were 10 to 15 sample workers then working in the Respondent company and there were 300 to 400 workmen who were working there. It is further admitted by UW-1 Shri Shigwan that in the complaint, it is not mentioned that he was preparing the jackets, pants, coats etc. When the company was not closed, the union Bharatiya Kamgar Sena was functioning there. The settlement was taken place in between the said union and the company. The payment of the retrenchment compensation got to each of the workmen. It is admitted by Shri Shigwan (UW-1) that he does not possess certificate that he was working as a Tailor Grade-I and he was never given the status of Tailor Grade-I through out his service. He was working as sample maker.

11. Except the above said oral evidence, no evidence has been adduced by the Complainants. As per pursis at Exh. C-4, the company does not express any wish to adduce the oral evidence. Thus, the affidavit of Exh. U-6 filed on behalf of the Exh. UW-1 by Shri Shigwan has remained unshaken as per his cross examination by the Respondent. There is no dispute about the fact that the Complainants were in service of the Respondent. As per the admission given by UW-1 Shri Datta Shigwan, he was never given the status of Tailor Grade-I. Then what was the category of the Complainants ought to have been proved by the Respondent. That evidence has not been adduced by the Respondent. In affidavit of Exh. U-6, it is specifically mentioned that the Complainants were doing the work of Tailor Grade-I. Though it is admitted by UW-1 Shri Shigwan that he was never given the status of Tailor Grade-I throughout his service period, the fact that he was working as Grade-I Tailor cannot be ignored. As per the Notification issued under Minimum Wages Act on 12th November 1982 under Sub-section (1) of Section 3 of the Minimum Wages Act, the Committee appointed by the Government of Maharashtra at fixed rates of wages for the readymade garment workers. Under the category-II workers *i.e.* Cutter, Trimmer, Sample Tailor and Tailor Grade-I, the wages for this category in Zone-I is Rs. 520. The Annexure-I filed alongwith this Notification under the list of Exh. U-10 disclosing the details of the arrears of the minimum wages based on this Notification dated 12th November 1982. As per ruling reported in *Oswal Petrochemicals* V/s. *Government of Maharashtra and Ors. 1997-II-CLR-472.* It has been held that the workmen are not paid minimum scales of wages as are paid to the regular employees. Such act is the unfair labour practice covered by item 9 of Schedule IV of the Act. As per the settlement in between the union and the Respondent company what was paid was the retrenchment dues. In the settlement Annexure, the names of the Complainants are appearing at Sr. Nos. 17, 18 and 24. The grade of the Complainants given in the settlement Annexure is that of "Tailors". The settlement of Exh. U-7 and Annexures appended therewith clearly disclosing that the Complainants were drawing salary per month as shown against their names *i.e.* Rs. 300. As per the Notification filed under Exh. U-10 issued by the Government of Maharashtra, under Minimum Wages Act, it is further clear that the Complainants are entitled to get the wages of Rs. 520 p.m. The Complainants are further entitled to get the arrears of the difference in wages for the employment, they have put with the Respondent. In view of the calculation of Annexure-I, of Exh. U-10, I find that the Complainants are entitled to get the minimum wages payable p.m. to the workmen of category-II of Zone-I.

12. The learned Counsel of the Respondent has submitted that the issue as regard to the nature of work, performed by the Complainants or the category to which, the Complainants belong is a matter of adjudication in reference under the Industrial Disputes Act. With due respect to the submission of the learned Counsel of the Respondent, I find that as per the settlement of Exh. U-7 to which the Respondent company was the party and signatory of it. The list of the workers attached with this settlement shows that the Complainants were working as Tailors and they have joined their services on 21st September 1973 and 22nd September 1973 as shown against their names. Similarly, the wages drawn by them have also been shown against their names. The Respondent company ought to have paid them the wages as per the Notification issued by the Government of Maharashtra. Instead of paying them the wages as per the Notification, they were paid less wages. In the affidavit Exh. U-6, it is specifically stated by the Complainant that the Complainant Shri Shigwan was doing the work of Tailor *i.e.* stitching the readymade garments, coats, pants and also doing the work of cutting as per the instructions. The Non-payment of the minimum wages have already been taken place. The Complainants have already suffered on account of prosecution of their claim before the wrong forum. There is no question for the Complainants to go for the adjudication proceeding when the remedy is available to them under the M.R.T.U. and P.U.L.P. Act. There is no dispute about the fact that they have been employed in the Respondent company and paid the wages less than prescribed under the Minimum Wages Act. Thus, they being the aggrieved employees can prosecute this complaint and the cause of action, thus, arisen on the date when there was a last termination of the proceeding filed by the Complainants. For these reasons, I find that the agreement of payment of wages may be there, but the wages are not paid by the Respondent as prescribed by the Government Notification. For these reasons, I hold that the Respondent had indulged into unfair labour practice during the period of employment of the Complainants as they have been paid less wages by the Respondent. I further hold that the Complainants have proved that they are entitled to get the minimum wages for the relevant period as per Annexure-I of Exh. U-10, and answer the issue Nos. 1 and 3 accordingly.

13. *Issue No. 2* :— The Complainants have proved the settlement of Exh. U-7. They are entitled to get the benefits of the settlement without prejudice to their rights to claim further and thus, the present complaint filed by them for getting the minimum wages is required to be entertained. It is admitted fact that the Complainants have accepted the benefits of settlement but, they are entitled to accept these benefits on the basis of the minimum wages *i.e.* basic + D.A. applicable to them at the relevant time. Hence, I answer issue No. 2 in the affirmative.

14. *Issue No. 4* :— This issue is regarding the maintainability of the complaint. There is no bar under Section 59 of the M.R.T.U. and P.U.L.P. Act for prosecuting this complaint. If any proceeding in respect of any matter falling within the purview of the Act is instituted under this Act (M.R.T.U. and P.U.L.P. Act), then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or as the case may be Bombay Act ---------- is the text of Section 59 of the M.R.T.U. and P.U.L.P. Act. The ambit of the bar of proceeding under Section 59 of the M.R.T.U. and P.U.L.P. Act can best to understood by comparing it with the text of Section 60 of the M.R.T.U. and P.U.L.P. Act which bars the suit filed in Civil Court from the subject matter of complaint or application to the Industrial Court or Labour Court under the M.R.T.U. and P.U.L.P. Act. So far as the present complaint is concerned, it is filed for the first time before the Court and there is no bar as such in prosecuting this compliant. The proceeding under Section 33(C)(2) of the Industrial Disputes Act which was filed by the Complainants before the Labour Court was confined to the particular fact of recovery of money claimed. The present proceeding is altogether different. The Complainants have chosen the wrong forum while prosecuting that proceeding. That does not mean that the present proceeding has been barred. Hence, I find that the present complaint is maintainable and answer issue No. 4 accordingly.

15. In view of para 2 clause (X) of the settlement Exh. U-7, the Complainants are entitled to prosecute this complaint for getting the difference in wages *i.e.* wages actually paid to them and they are entitled to get the wages as per the Minimum Wages Act. The application filed by the Complainants under Section 33(C)(2) came to be rejected on the ground of jurisdiction and the present complaint of unfair labour practice came to be filed by them which is required to be allowed. Hence, the order :—

Order

(*i*) The complaint is hereby allowed.

(*ii*) It is hereby declared that the Respondent has engaged in unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 by not paying to the Complainants the minimum wages prescribed under the Minimum Wages Act, 1948 during their service period.

(*iii*) The Respondent is hereby directed to cease and desist from engaging in such unfair labour practice.

(*iv*) It is hereby directed to the Respondent to pay difference in wages as per Annexure-I of Exh. U-10 to the complaint along with benefits of the settlement dated 9th November 1987 and as per the Notification dated 12th November 1982 of Minimum Wages Act.

(*v*) The wages be paid to the Complainants as per the Notification dated 12th November 1982 issued by the Government of Maharashtra as per the power conferred by clause (a) of Sub-section (1) of Section 3 read with Sub-section (2) of Section 5 of the Minimum Wages Act.

No order as to costs.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 18th June 2002.

(Sd.)
Registrar,
Industrial Court, Mumbai.

INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 87 OF 2002.—*IN* Misc. Criminal Complaint (ULP) No. 27 of 2002.—Rashtriya Chemicals and Fartilizers Ltd., Admn. Building, Chembur, Mumbai 400 074.—*Applicant*.—*Versus*—Ramesh Kamble, Type-I-B/15/342, RCF Colony, Mumbai 400 074.—*Respondent*.

In the matter of Revision Application U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri P. M. Patel, Ld. Advocate for the Applicant.
Shri A. S. Peerzade, Ld. Advocate for the Respondent.

Oral Judgment
(Delivered on this 24th day of June, 2002)

The present Revision Application is preferred by the Applicant Rashtriya Chemicals and Fertilizers Ltd. feeling aggrieved of the order below Exh. U-1 dated 30th March 2002 whereby the 4th Labour Court, Mumbai issued the process against the Accused No. 1 to 3 U/s. 48(1) of the M.R.T.U. and P.U.L.P. Act returnable on 29th April 2002.

2. The brief facts of the case may be stated as follows :—

It is seen that Original Complaint (ULP) No. 990 of 1997 was filed by the Applicant herein against RCF Employees Union praying therein that the member-employees of the RCF Employees Union be restrained from proceeding on strike, to gherao or stage demonstration, etc. and the said Complaint has been withdrawn by the Complainant and the Industrial Court, Mumbai passed order on 24th December 1997 with a direction to the Complainant to pay the cost of Rs. 500 to the Respondent Union within one week from the date of the order. Similarly there was a Ref. (ULP) No. 22 of 1997 and in the said Reference, Rashtriya Chemicals and Fartilizers Ltd. was the Applicant and RCF Employees Union was the Opponent. The said Reference was for declaration of the strike to be illegal. It appears that the said Reference has been rejected by the 5th Labour Court, Mumbai *vide* order dated 21st February, 1998, thereby observing that the interim relief granted by the Court stands vacated and also directed the Applicant to pay costs of Rs. 1000 to the Opponent towards costs of the proceedings.

3. It is seen that one of the employee *viz*. Mr. Ramesh Kamble, a member-employee of RCF Employees Union has filed Misc. Criminal Complaint (ULP) No. 27 of 2002 contending that the Applicant Company has not complied with the orders of the Labour Court and the Indistrial Court, referred to above. The 4th Labour Court, Mumbai after recording the verification of Mr. Ramesh Kamble issued the process on 30th March 2002 which was made R/o. 29th April 2002 and the same has been challenged in the present revision.

4. I have called for the record and proceedings and gone through the same. Heard Mr. P. M. Patel, Ld. Advocate for the Applicant and Mr. A. S. Peerzade, Ld. Advocate for the Respondent. The following points arise for my determination with my findings thereon, as below :—

Points.—

(1) Whether Revision Application (ULP) No. 87 of 2002 is to be allowed by setting aside the order dated 30th March, 2002 of the 4th Labour Court, Mumbai in respect of issuance of process ?

(2) What order and relief ?

Findings.—

Point No. 1 :- No.

Point No. 2 :- Please see final order.

Reasons

5. *Point No. 1* :— The main contention and grievance of the Applicant is that while passing the order dated 24th December 1997 in Complaint (ULP) No. 99 of 1997, the Company *i.e.* Applicant herein was directed to pay cost of Rs. 500 to the Respondent Union *viz.* RCF Employees Union and the said cost has already been deposited on 29th December 1997 in the Industrial Court. Mr. P. M. Patel, Ld. Advocate for the Applicant canvassed that the cost as awarded *i.e.* Rs. 1,000 by the 5th Labour Court, Mumbai in Ref. (ULP) No. 22 of 1997 *vide* order dated 21st February 1998, has also been paid to the Union on 22nd June 2002. In view of this position, Mr. Patel argued that now no cause survives and the Labour Court ought not to have issued the process against the Applicant Company. One of the point canvassed by Mr. Patel, Ld. Advocate for the Applicant was that the present Misc. Criminal Complaint (ULP) No. 27 of 2002 has been filed in the month of February, 2002 *i.e.* after the period of about 4 years of passing the orders by the Labour and Industrial Court and that being beyond the period of limitation, the Misc. Criminal Complaint itself is not maintainable. To substantiate his submission, he invited my attention to Section 468 of the Code of Criminal Procedure, 1973 which partains to Bar to taking cognizance after lapse of the period of limitation. As per the said Section - "(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (*2*), after the expiry of the period of limitation." The said section further *interalia* lays down- "(2) The period of limitation shall be - (a) six months, if the offence is punishable with fine only (b) one year, if the offence is punishable with irmprisonment for a term not exceeding one year; (c) three years, if the offence in punishable with imprisonment for a term exceeding one year but not exceeding three years." Mr. Patel further laid emphasis on Section 39 of the M.R.T.U. and P.U.L.P. Act, 1971 which pertains to Cognizance of Offence, wherein it has been enacted that- "No Labour Court shall take cognizance of an offence except on a complaint of acts constituting such offence made by the person affected thereby or a recognised union or on report in writing by the Investigating Officer."

6. According to Mr. Patel Originally in the Complaint and the Reference, detailed above, RCF Employees Union was a party and the present Misc. Criminal Complaint filed by Shri Ramesh Kamble in his individual capacity, is illegal and not proper and therefore the Labour Court should not have issued the process. Apart from the above submissions, he also invited my attention to Section 30 of the M.R.T.U. and P.U.L.P. Act which is in respect of the powers of the Industrial Court and Labour Court and thereby canvassed that there is no unfair labour practice declared by the Industrial Court while disposing the Complaint (ULP) No. 990 of 1997 as the same was withdrawn, as also by the Labour Court while rejecting the Ref. (ULP) No. 22 of 1997. Thus, in substance Mr. Patel urged that in the present case, the Criminal Complaint filed by the concerned employee is erroneous and illegal and also not maintainable when particularly the orders of the Labour Court and the Industrial Court for payment of cost, referred to above, have been complied with and hence that being the only grievance regarding non-compliance of the order in respect of payment of cost, the Criminal Complaint does not survive. Thus on the aforesaid grounds, Mr. Patel requested to allow the Revision by Setting aside the impugned order passed by the Labour Court, as detailed above.

7. It is significant to note that the order of the Labour Court dated 30th March 2002 by which process has been issued against the Accused Nos. 1 to 3 U/s. 48(1) of the M.R.T.U. and P.U.L.P. Act indicates that the Labour Court has recorded the verification of the concerned employee Mr. Ramesh Kamble and in his statement before the Labour Court he has specifically deposed that the 5th Labour Court, Mumbai *vide* its Order dated 21st February 1998 in Ref. (ULP) No. 22 of 1997 directed the Accused *i.e.* the Applicant herein to reimburse 3 day's wages illegaly deducted by them within 8 days from the date of passing of the order and failure on their part to reimburse the same within 8 days, the reimbursement will be together with the interest @ 12%. The Accused were also directed to pay cost of Rs. 1,000 to the RCF Employees Union. The said Mr. Kamble has also specifically stated in the verification that the Industrial Court also in Complaint (ULP) No. 990 of 1997 filed by the Company was pleased to pass an

order dated 24th December 1997 and thereby directed the Accused (Applicant company herein) to withdraw all the actions. The said worker has also submitted that they have repeatedly requested the Accused abovenamed in person and also by writing several letters, relied by him in the Complaint, thereby requesting the Company to implement the aforesaid orders, but deliberately and intentionally the Company disobeyed the same and hence there is a breach.

8. The Labour Court has on recording the verification passed the order below Exh. U-1 and thereby issued the process against the Accused persons U/s. 48(1) of the M.R.T.U. and P.U.L.P. Act, which was made R/o. 29th April 2002. The Accused No. 3 has already appeared in response to the issuance of the process, but Accused No. 2 failed to appear though served and the company accepted the process and thereby claiming exception to the order of issuance of process dated 30th March 2002, as canvassed by Mr. Patel, Ld. Advocate for the Applicant.

9. It is to be noted that in the order passed by the Industrial Court whereby the Complaint has been disposed of the same being withdrawn by the Complainant, there is a mention that- "Interim orders if any stand vacated. If Complainant has acted in view of any of the order of this Court, that action is hereby revoked grfotwith. " on this point, Mr. Patel argued that the interim order was in favour of the Company whereby the Respondent Union was restrained from proceeding on strike and staging demonstration. On the contrary, Mr. A. S. Peerzada, Ld. Advocate for the Respondent herein canvassed that because of the interim order, the Company has deducted the salary of 3 days of the member-employees of the RCF Employees Union and that has not been reimbursed, though the Main Complaint has been withdrawn and the Industrial Court has passed order, referred to above. Thus there is a controversy over the order passed by the Industrial Court dated 24th December 1997. The Labour Court has recorded the verification of the employee Shri Ramesh Kamble, which is consistent to the statement made in the Criminal Complaint and the order passed by the Industrial Court dated 24th December 1997. Thus I don't find that there is any error committed by the Labour Court while issuing the process in respect of disobedience of the order of the Industrial Court.

10. I am aware that the cost of Rs. 500 has been deposited by the Applicant herein on 29th December 1997 *i.e.* within 5 days of withdrawal of the Complaint on 24th December 1997. It is necessary to place on record that in fact it appears that the dispute is not only in respect of payment of cost, as canvassed by Mr. Patel, but the real dispute between the parties, as per the contention of Mr. Peerzada, appears to be non-compliance of the order of the Industrial Court and of the Labour Court and that is to be seen while deciding the Misc. Criminal Complaint.

11. It is also important to note that the present Misc. Criminal Complaint (ULP) No. 27 of 2002 is filed in the month of February, 2002 and as per the submission of Mr. Patel, as detailed above, the same is beyond the period of limitation. It is pertinent to note that non-compliance of the orders of the Labour and Industrial Court has been alleged by the concerned workmen Mr. Ramesh Kamble and therefore action by way of Criminal Complaint U/s. 48(1) is initiated. The same being a continuous cause of action and recurring one, that can be considered and adjudicated while deciding the Criminal Complaint.

12. One of the point stressed by Mr. Patel was that the present Criminal Complaint is filed by Mr. Ramesh Kamble in his individual capacity. In the Original Complaint and Reference, RCF Employees Union was a party Respondent and therefore Mr. Ramesh Kamble has no right to file the Criminal Complaint. On this point, Mr. Peerzada, Ld. Advocate for the Respondent submitted that Mr. Kamble and other workers have 2 years back resigned the membership of RCF Employees Union and in the individual capacity, the Complaint U/s. 39 of the M.R.T.U. and P.U.L.P. Act is maintainable, which pertains to cognizance of an offence. In the persent case, though previously Mr. Ramesh Kamble was member of RCF Employees Union, but now he is not the member of said Union since last 2 years and therefore in his individual capacity he can lodge the Complaint and I don't find that on that score the submission of Mr. Patel is to be accepted. Mr. Peerzada, on this point placed reliance on a case reported in *1994 II CLR p. 992 (Pralhad Atmaram Jadhav* V/s. *Managing Director, Kulkarni Black and Decker Ltd.).* On going through this case, it shows that there was a problem for consideration U/s. 44 in revision

and it has been held that the Industrial Court committed error in taking a view that the power of judicial superintendence would not have been invoked except by the party who had originally filed the Complaint. Thus it reflects that Mr. Ramesh Kamble in the present case can initiate the Criminal Complaint because he is one of the affected person.

13. Much was canvassed by both the parties regarding the orders passed by the Labour Court and Industrial Court and I am aware that while issuing the process, the Labour Court has perused the orders produced at Exh. 'A' and 'B'. On going through the said orders it indicates that the Complaint is withdrawn by the Company and the Reference is rejected by the Labour Court and in both the cases, costs have been imposed on the Company. Mr. Patel canvassed that whatever is mentioned in the body of the judgment that cannot be said to be binding for obeyance by the Applicant. On the contrary, Mr. Peerzada insisted and canvassed that though the Complaint has been withdrawn and the Reference has been rejected, but the observations made by the respective Labour Court and Industrial Court are binding. On this point, it will not be proper at this stage, to express any view because the Criminal Complaint filed by the worker for disotedience of the aforesaid orders is yet to be dealt with and hence any view expressed while deciding the Revision Application, that will cause prejudice to either side.

14. On carefully examining the facts and circumstances of the case in hand, I don't find that any error or illegality is committed by the Labour Court while issuing the process. The powers conferred by Sec. 44 of the M.R.T.U. and P.U.L.P. Act upon the Industrial Court empower it, in so far as evidence is concerned, to set aside the order under Revision when the evidence on record read, is incapable of supporting the order. In the case in hand, as detailed above, before issuing the process, the Labour Court has taken care of recording the verification and on satisfaction, came to the conclusion that the Complainant has made out a *prima facie* case for issuance of the process in the Criminal Complaint and hence I don't find that the interference of the Industrial Court is required to quash ans set aside the said order. Therefore, I hold that the Revision Application deserves to be dismissed and I answer the Point No. 1 in the *Negative.*

15. *Point No. 2* :— In view of the finding and reasoning recorded hereinabove, I pass the following order :—

Order

Revision Application (ULP) No. 87 of 2002 is dismissed.

No order as to costs.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
dated the 24th June 2002.

S. R. AADAN,
Dy. Registrar,
Industrial Court, Mumbai.
dated the 26th June 2002.

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IN THE INDUSTRIAL COURT, AT MUMBAI

REVISION APPLICATION (ULP) No. 54 of 2002. (1) Tipco Polymers Limited, Rani Sati Marg, Mumbai 400 097; (2) Shri Dayalchandra B. Thakkar, C/o. Tipco Polymers Limited, Rani Sati Marg, Mumbai-400 097; (3) Shri J. C. Gupta, C/o. Tipco Polymers Limited, Rani Sati Marg, Mumbai-400 097.—*Applicants*.—*Versus*—Mrs. Rohini K. Shah, A-60/202, "Shyamala", Anandnagar, Dahisar East, Mumbai 400 068.—*Opponent*.

In the matter of revision application under section 44 of the M.R.T.U. and P.U.L.P. Act against the Order dated 5th March 2002 passed in Complaint (ULP) No. 411 of 2002 by Eighth Labour Court, Mumbai.

PRESENT.—Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shri S. Choudhary Advocate for the Applicants.
Shri T. G. Vartak Advocate for the Opponent.

Judgment and Order

The Applicants in the present revision application are the Respondents in the complaint being Complaint (ULP) No. 411 of 2001 filed by the present Opponent employee for the unfair labour practices under item 1(a), (b), (d) and (f) of Schedule IV of the M.R.T.U. and P.U.L.P. Act. (hereinafter the present Opponent employee is referred to as the Complainant and the present Applicants are referred to as the Respondent.

2. The Complainant employee has filed a complaint being Complaint (ULP) No. 411 of 2001 with following facts. She was in the employment of the Respondent company but the said dispute/matter was settled before the Conciliation Officer and she was allowed to resume her duties with effect from 13th April 2001 with continuity of service and back wages. It is further contended that thereafter she was sent a letter dated 2nd May 2001 calling upon her to resume her duty at Walsad in Gujrat State on the next day *i.e.* on 3rd May 2001. She refused to accept the said letter. Again, the Respondents sent a letter dated 3rd May 2001 and asked her to join the transferred place on 10th May 2001. Thereafter, she again received a letter dated 10th June 2001 whereby her services came to be terminated with immediate effect. The said termination letter was accompanied by a pay order for Rs. 91,707 of retrenchment compensation and one month's notice pay. The said letter includes the reason of retrenchment that due to heavy losses in the past and there was no change in the financial position, and it was not possible to provide for work to her at Malad. It is also mentioned therein that the Respondents wanted to transfer her to M/s. Tipco Industries Limited, Walsad. The said transfer order was challenged before the Industrial Court, but subsequently, the Respondents withdrew the said transfer order. It is further contended that the termination letter issued to her amounts to victimization and the action of termination is for patently false reason with undue haste and not in good faith. She replied the termination letter dated 10th July 2001 *vide* her letter dated 25th July 2001 wherein she has denied the contentions in the termination letter and also clarified the facts and circumstances as to how she has been victimised and harassed by the Respondents. It is further contended that the Respondents attempted to reduce the strength of the employees by taking mass resignations. While settling the accounts in full and final settlement, the employees have been paid gratuity for 15 days per year; *ex-gratia* payment for 15 days per year; and special *ex-gratia* payment of 15 days per year; including the total monetory benefit of 45 days per year. It is further contended that in 1999, she was also considered for full and final settlement and she was offered the benefit for total 45 days per year. The employees from whom the mass resignations were obtained in the year 1997, were offered payment in full and final settlement by taking into account of the formula of 45 days in total per year. However, the complaint was called upon to finalise her legal dues and to accept 15 days' less payment. Lastly, the letter terminating her services is issued to her. It is further contended that under the guise of retrenchment, her services have been terminated without complying with the provisions of law. Hence the complaint.

3. The Complainant filed an application for interim relief Exh. U-2 alongwith the main complaint.

4. The Respondent company filed their reply at Exh. C-5 and thereby denied the claim/ interim relief sought by the Complainant employee.

5. On considering the arguments advanced by the learned Advocates for both parties, the documents produced by both parties and the affidavits filed by both parties, the trial Judge was pleased to grant interim relief of reinstatement in favour of the Complainant.

6. Being aggrieved by the said order passed below the application for interim relief Exh. U-2, the Respondents have preferred this revision application on the grounds as set out in the revision memo.

7. I have heard the learned Advocates for both parties. On considering their arguments and the material placed on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :—

Points	*Findings*
(1) Whether the trial Judge has rightly decided the points of *prima facie* case and balance of convenience and recorded the findings thereon and passed the final order dated 5th March 2002 ?	Yes.
(2) Whether it is required to interefere with the findings and the final order dated 5th March 2002 recorded/ passed by the trial Judge ?	No.
(3) What order ?	As per the final order below.

Reasons

8. On the point of revisional powers under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971, the learned Advocate for the Complainant has submitted that this Court has limited powers under section 44 of the said Act and this Court cannot interfere with the order of the Labour Court without any reason or without any error apparent on the face of the order. In support of his submissions, he has relied on the following decisions of our High Court :—

(1) Mahila Griha Udyog Lijjat Papad *V/s.* Kamgar Congress and others reported in *1983 (46) FLR 244.*

(2) Hindustani Orachar Sabha and others *V/s.* Dr. Miss Rama Sen Gupta and others *reported in 1986 I CLR 77.*

(3) Pest Control (India) Pvt. Ltd. *V/s.* Pest Control (India) Pvt. Ltd. Employees All India Union and others, reported in *1994 I CLR 230.*

(4) Vitthal Gatalu Marathe *V/s.* MSRTC and Others, reported in *1995 I CLR 854.*

(5) M. K. Bhuvaneshwaran *V/s.* Premier Tyres Ltd. and others, reported in *2000 (4) LLN 1032.*

(6) MSRTC *V/s.* Kantrao s/o. Gyanbarao Dabhale, reported in *2000 II CLR 865.*

It appears from the observations in the above cases that the power of superintendence under section 44 of the M.R.T.U. and P.U.L.P. Act does not include the power to review evidence on record and the powers of superintendence can be used only in case where the errors apparent on the face of the record are evident from the orders passed by the Labour Court and not in finding of fact recorded by it. It further appears that this Court has no power to embark upon fresh re-appreciation or re-appraisal or re-assess the evidence, while entertaining the application under section 44 of the said Act. Even if on re-appreciation of evidence, this Court comes to a conclusion, which is different from the conclusion arrived by the Labour Court, it cannot disturb the findings of the Labour Court below in exercise of its limited supervisory jurisdiction. The learned Advocate for the Complainant has also drawn my attention on the case of the Hon'ble Supreme Court between Chandavarkar Sita Ratna Rao *V/s.* Ashalata S. Guram reported in *AIR 1987 SC* wherein, it is held by Their Lordships that the High Court cannot interfere with finding of facts unless they are perverse or based on no evidence or they resulted in manifest injustice. It is further held by Their Lordships that the High Court should decline to interfere with the finding of facts where the question depends on appreciation of evidence and two views are possible. Thus, from the observations in all the above cases, it appears that this Court has it limited jurisdiction to interfere with the findings of the Labour Court and it cannot interfere with the findings of the Labour Court without any good reason, as given in the above cases. It is, therefore, necessary to consider the finding of fact and the order under challenge in the light of the above observations.

9. Admittedly, the Complainant joined the company in the year 1979 as Accounts Clerk. Initially, she was appointed by a firm M/s. Industries Chemicals and then transferred to D. M. Thakkar and Company and then from 1st October 1992 transferred to the Respondent No. 1 company. The relations between her and the Respondent No. 1 company as the employer and employee is not disputed. It is also not disputed that her services were orally terminated by the Respondent No. 1 company on 11th May 2000, but the said dispute came to be settled before the Concilitiation Officer and she was allowed to join her duty with effect from 13th April 2002 with full back wages. Then she received letter of transfer dated 2nd May 2001 from the Respondent company by which she was asked to report on duty at Valsad in Gujrat State on the following day *i.e.* on 3rd May 2001. She again received another letter dated 3rd May 2001 granting time to join on 10th May 2001 at Valsad. Then she received third letter dated 10th July 2001 terminating her service. The said letter was accompanied by a pay order of Rs. 91,707 sent towards retrenchment compensation and one month's notice wages. In the said letter, she was communicated that her termination of service was due to financial loss and non availability of work at Malad. Ultimately, her transfer letter it came withdrawn in the Court matter.

10. It is the case of the Complainant that the Respondent company and Tipco Industries Limited, Walsad where she was asked to join her duty, are one and the same company, as another company is formed with a view to avoid the liability under the Industrial and Labour law. The termination of her service is the action taken for false reason with undue haste, not in good faith and in colourable exercise of the rights. Admittedly, the present Complainant was transferred to Tipco Industries Limited, Walsad. The word "transfer" mentioned in the said letter shows the same thing. Later on, it was contended by the Respondents that the word "transfer" came to be mentioned in the said letter by mistake, as it was not transfer. They have also contended that Tipco Industries Ltd., Walsad, was in need of the employees and, therefore, the chance of employment at Walsad was given to the Complainant, instead of terminating her services. The facts on record show that the plant and machineries, raw materials and some skilled experienced workers have been transferred to Tipco Industries at Walsad by the Respondent company. All these facts shows the substance in the contention made by the Complainant. Even if it is pressumed that the word "transfer" came to be written in the transfer order of the Complainant by mistake though it was not transfer, the question arises as to whether the Complainant was asked about arrangement and whether the Complainant had given any acceptance. The other employees were also transferred to Tipco Industries Limited, Walsad, by giving transfer orders. Therefore, at this stage, it does not appear that the word "transfer" came to be written in the transfer order of the Complainant by mistake. On considering all these facts, the trial Judge has also held that the case with regard to the mentioning of the word "transfer" cannot be accepted at this stage. The trial Judge has also held that there is a substance in the contention of the Complainant that Tipco Industries Lmimted, Walsad, is a new business of the Respondents company in new name.

11. As mentioned above, the transfer order dated 2nd May 2001 was later on withdrawn by the Respondent company and the Complainant was retrenched by letter dated 10th July 2001 accompanied by a pay order of Rs. 91,707 towards the retrenchment compensation and one month's notice wages etc. It is the case of the Respondent company that her retrenchment is not for good reasons but for false reasons and to get rid of her services and it amounts to victimization, On this point, the learned trial Judge has observed that since it is specifically pleaded by the Complainant that her retrenchment is for false reason and the reason of the heavy financial loss is made out to escape from liability, it is expected from the Respondents to produce the relevant documents in their custody, to prove otherwise. The learned Advocate for the Respondents has argued this revision application at length. But he has not claimed that all the documents expected to produce had been produced before the Labour Court.

12. It is also not disputed that the Respondents reduced the strength of their employees by declaring the voluntary retirement scheme, in the year 1997 and thereby paid 45 days' benefit as per the settlement between the management and the workers union representatives. But the present Complainant has been offered 30 days' benefit. On this point, the Respondents have given their explanation that it was out of compulsion that they paid 15 days more benefits.

13. It is one of the contentions of the Complainant that the Respondents have not followed the necessary provision for effecting her retrenchment. On this point, the Respondent have contended that no notice is necessary before retrenchment, as the strength of their employees was not more than 100 during last preceding year. The trial Judge has also held that even if it is pressumed that the due procedure prescribed by law is duly followed, it remains that the employer should establish bonafide reason of retrenchment. The trial Judge has also given the instances *viz.* first dismissal on 11th May 2000, reinstatement in view of the settlement dated 13th April 2001, attempt to transfer her services to Walsad, withdrawal of the said transfer order etc. Immediately thereafter, the Complainant was terminated/retrenched by a letter dated 10th July, 2001. All these facts show that the Respondents have done all possible efforts to get rid of her services. The trial Judge has also held the same thing.

14. The learned Advocate for the Respondents has submitted that they filled their written arguments and also gave the draft issues, but the trial Judge did not consider the same while deciding the application for interim relief Exh. U-2. He has further submitted that the issue of jurisdiction was to be decided by the Labour Court. Here, this revision is brought on the order passed below the application for interim relief Exh. U-2 and not on the final decision in the complaint. In case the Respondents would have insisted the trial Court to decide the issue of jurisdiction, the trial Court would have decided the same first. In the order under challenge, the trial Judge has rightly framed the points for his consideration and decided these points. Any way, it is not necessary to frame the issue of jurisdiction and to decide the same at the time of deciding the application for interim relief. It does not appear that the trial Judge has made any mistake for not deciding the issue of jurisdiction.

15. The learned Advocate for the Respondents has also submitted that the trial Judge has not given his finding that the Respondents are guilty for the alleged unfair labour practices. It is true that the trial Judge has not framed specific point of the unfair labour practices and has not given his findings about the unfair labour practice. However, it appears that the trial Judge has framed the point (as to whether the Complainant has made out a *prima facie case* for grant of any interim relief ?) and considered the material on record, gave his finding on the point of *prima facie* case of unfair labour practice. Further, the trial Judge has framed another point of balance of convenience. Thus, the trial Judge has rightly framed the points required for the purpose of deciding the application for interim relief Exh. U-2. From the said order of the trial Judge, it appears that the trial Judge has given sufficient reasons to show that the Respondents did all possible acts to get rid of services of the complaint and this act of the Respondents amounts to victimization and the termination/retrenchment is not for good reason. Therefore, it does not appear any substance in the contention that the trial Judge has not given a finding about *prima facie* case of unfair labour practice.

16. The learned Advocate for the Respndents has relied on several cases on the point of interim relief. The first is between Telco Kamgar Sanghatna and others and Avinash Pandurang Toro and others, reported in *1989 II CLR 852 (Bom.),* wherein, it is held by Their Lordships that the Court must keep before itself several considerations *viz.* (1) fair strong *prima facie* case; (2) grave prejudice if injunction is not granted and (3) finally balance of convenience. The second case is between Sarva Shramik Sangh *V/s.* Swan Mills Ltd. reported in *1994 II CLR 205-205 (Bom.).* It is held by Their Lordships that several factual and legal aspects shall have to be examined in depth before a difinite conclusion is arrived at by the Court and the said problems cannot be sorted out at an interlocutory stage. The third case is Lorcom (Protectives) Limited *V/s.* Smt. Lata Dangare and others, reported in *1993 I LLN 564(Bom.),* wherein, it is held by Their Lordships that relief of reinstatement cannot be granted under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act as that will be in a way granting to the Complainant a final relief. Further case is between the Executive Engineer, M.S.E.B. *V/s.* Industrial Court, Amaravati and others, reported in *2001 (4) LLN 657 (Bom.),* wherein, it is held by Their Lordships that grant of interim relief should not be such which would amount to grant of final relief at the interlocutory stage without proper adjudication of the matter on merits unless there are exceptional circumstances. Besides the above cases, the learned Advocate for the Respondents has relied on other cases wherein Their Lordships have given considerations, which are given

in the first case of Telco Kamgar Sanghatana (supra) for deciding the application for interim relief. It is, therefore, not necessary to discuss all other cases. In the present case, the learned trial Judge has framed the necessary points required for deciding the application for interim relief and has given his findings thereon. Further, the trial Judge has granted the relief of reinstatement. But, it appears that he has given the reasons for granting such relief. Therefore, it does not appear that the trial Judge had made any mistake in granting such relief in such exceptional circumstances.

17. The learned Advocate for the Respondents has also relied on the case of Ashok Vishnu Kate *V/s.* M. R. Bhope, Judge, Labour Court, Mumbai, and others reported in *1992 (3) BCR 352.* Wherein, it is held by Their Lordships that the unfair labour practices as set out in item 1 of schedule IV of the M.R.T.U. and P.U.L.P. Act come into existence only on discharge of dismissal of an employee cannot be accepted. It is not every discharge or dismissal of an employee, which amounts to unfair labour practice, but a discharge or dismissal is unfair labour practice if it is arrived at by resorting to the methods, which are set out in item 1(*a*) to (*f*). In the present case, the Complainant has come with the case of unfair labour practice under item 1(*a*), (*b*), (*d*) and (*f*) of Schedule IV of the M.R.T.U. and P.U.L.P. Act and she has set out the particulars thereof in her present complaint. The facts on record also shows that her retrenchment/termination of service is not for good reason. Therefore, the dismissal in the present complaint is unfair labour practice and in such case, interim relief can be granted.

18. The learned Advocate for the Respondents has also relied on the case of the Secretary, Central Board of Direct Taxes *V/s.* B. Shyamsunder and others, reported in *AIR 2001 Supreme Court 3288.* He has mainly relied on Para 9 of this judgment. It appears from the said Para that the reward amount was purely ex-gratia payment. It is difficult to treat it as a condition of service. He has also relied on the case of Arvind Anand Gaikawad *V/s.* Uni Abex Alloy Products and others, reported in *1988 I CLR 02 (Bom.).* Their Lordships have held therien that the issue that the employer had engaged 300 or more employees is raised by employees and when the employer disputes that fact, the burden to establish negative fact cannot be placed at the door step of the employer. In the present case, the trial Judge has not placed the burden to establish any such negative fact at the door-step of the Respondents. On the other hand, the trial Judge has discussed the case pressuming that no prior notice was required to be served on the Complainant. Therefore, the question as given in the above case does not arise in the present case. As regards the retrenchment compensation, the trial Judge has not come to the conclusion that the Complainant is entitled to the benefit of 45 days but it has only put the said instance to show the conduct of the Respondents.

19. From the above discussions, it appears that the trial Judge has rightly decided the points and passed the interim order granting interim order. It is, therefore, not necessary to interfere with the findings and the said order dated 5th March 2002 passed below the application Exh. U-2 in Complaint (ULP) No. 411 of 2001. In the result, the Points Nos. (1) and (2) are hereby decided accordingly. With this, I proceed to pass the following order :—

Order

Revision Application (ULP) No. 54 of 2002 is hereby dismissed.

No order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 13th June 2002.

K. G. SATHE
Registrar,
Industrial Court, Mumbai.

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